



# राजपत्र, हिमाचल प्रदेश

## हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

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शिमला, शनिवार, 15 मार्च, 2014 / 24 फाल्गुन, 1935

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हिमाचल प्रदेश सरकार

**LABOUR & EMPLOYMENT DEPARTMENT**

**NOTIFICATION**

*Shimla-2, the 15<sup>th</sup> February, 2014*

**No. Shram (A) 4-9/2006-IV-Loose.**—In Continuation of this Department Notification No. 19-8/89-Shram (Loose) dated 7-9-1992 and in exercise of powers conferred by Clause (b) of Section 39 of the Industrial Disputes Act, 1947 (14 of 1947), the Governor, Himachal Pradesh is pleased to direct that the powers exercisable by the State Govt. under Section 10, 12 (5), 25-M,

25-N, 25-0 and Section 33-C (1) of the Act *ibid* shall also in relation to such matters be exercised by the Joint Labour Commissioner/Deputy Labour Commissioner Himachal Pradesh, with immediate effect.

By order,  
R.D. DHIMAN,  
*Pr. Secretary (Lab. & Emp.).*

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## TRANSPORT DEPARTMENT

### NOTIFICATION

*Shimla-2, the 13<sup>th</sup> March, 2014*

**No. TPT-C(9)-8/2002.**—The Governor, Himachal Pradesh in exercise of the powers conferred by sub-section (6) of Section-41 of the Motor Vehicles Act, 1988 (No. 59 of 1988) and all other powers enabling him in this behalf is pleased to allot/release registration marks/number from Serial No.0001 to 9999 under the Registration marks **HP-14-E** to Registering and Licensing Authority, **Solan** Distt Solan Himachal Pradesh, for registration of motor vehicles, with immediate effect.

By order,  
K. SANJAY MURTHY,  
*Principal Secretary (Transport).*

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## TRANSPORT DEPARTMENT

### NOTIFICATION

*Shimla-2, the 13<sup>th</sup> March, 2014*

**No. TPT-F(6)-1/2013-I.**—The Governor, Himachal Pradesh in exercise of the powers conferred by Rule-42 of the Himachal Pradesh Motor Vehicles Rules, 1999, is pleased to appoint M/S Jagdemy Trading company Village Bhuppur Poanta Sahib Distt Sirmour HP as Temporary Registration Authority to sign Temporary Registration Marks in respect of new vehicles being sold by them subject to the following conditions:—

1. The names of the person(s) of the firm who shall be competent to sign the temporary certificate of registration marks shall be got approved/specifyed by the District Magistrate concerned.

2. The fee for assignment of Temporary Registration Marks shall be 50% of the fee specified in Rule-81 of the Central Motor Vehicles Rules, 1989 and the same be deposited in the Government Treasury in major Head-0041-Taxes on Vehicles-01-receipts under Central Motor Vehicles-02-Registration Fee/inspection Fees.

3. The firm issuing a Temporary Certificate of Registration shall assign to the vehicle a mark to be displayed thereon in the manner specified in Rule-51 of the Central Motor Vehicles Rules, 1989 the letters and figures composing the marks being in red on a yellow ground.

4. The firm shall send details of all Temporary Registration Marks issued by them to the Director of Transport, Himachal Pradesh, Shimla-4 along with copy of treasury challans by the first of every succeeding month.

5. All other conditions specified in Rule-42 of the Himachal Pradesh Motor Vehicles Rules, 1999 shall be abided by the firm.

By order,  
K. SANJAY MURTHY,  
*Principal Secretary (Transport).*

## TRANSPORT DEPARTMENT

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**No. TPT-F(6)-1/2013-I.**—The Governor, Himachal Pradesh in exercise of the powers conferred by Rule-42 of the Himachal Pradesh Motor Vehicles Rules, 1999, is pleased to appoint M/S Jay Kays Himalya auto Care Indl. Area Shoghi Distt Shimla HP as Temporary Registration Authority to sign Temporary Registration Marks in respect of new vehicles being sold by them subject to the following conditions:—

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*Principal Secretary (Transport).*

### आबकारी एवं कराधान विभाग

अधिसूचना

शिमला-2, 14 मार्च, 2014

**संख्या: ई.एक्स. एन.-एफ(10)-7 / 2011-वोल्यूम-I.**—हिमाचल प्रदेश की राज्यपाल, हिमाचल प्रदेश मूल्य परिवर्धित कर नियम, 2005 के नियम 37-क और सेन्ट्रल सेल्ज टैक्स (हिमाचल प्रदेश) रॉल्ज, 1970 के नियम 7 के उप-नियम (2-ए) के अधीन उनमें निहित शक्तियों का प्रयोग करते हुए अधिसूचित करती हैं कि हिमाचल प्रदेश मूल्य परिवर्धित कर अधिनियम, 2005 और केन्द्रीय विक्रय कर अधिनियम, 1956 के अधीन रजिस्ट्रीकृत उन समस्त व्यौहारियों को, जिनका वार्षिक आवर्त 40.00 लाख रुपए या इसके अधिक है, 1-4-2014 से कर का संदाय, आबकारी एवं कराधान विभाग के पोर्टल के माध्यम से, इलैक्ट्रॉनिकली करना अनिवार्य होगा।

आदेश द्वारा,  
हस्ताक्षरित /—  
प्रधान सचिव (आबकारी एवं कराधान)।

[Authoritative English text of this Department Notification No. EXN-F(10)-7/2011-Vol.I dated 14-03-2014 required under Clause (3) of Article 348 of the Constitution of India.]

### EXCISE AND TAXATION DEPARTMENT

#### NOTIFICATION

Shimla-171002, the 14<sup>th</sup> March, 2014

**No. EXN-F(10)-7/2011-Vol. I.**—In exercise of the powers vested in her under rule 37-A of the Himachal Pradesh Value Added Tax Rules, 2005 and sub-rule (2-A) of rule 7 of the Central Sales Tax (Himachal Pradesh) Rules, 1970 the Governor, Himachal Pradesh, is pleased to notify that all dealers registered under the Himachal Pradesh Value Added Tax Act, 2005 and the Central Sales Tax Act, 1956 having annual turnover of Rs. 40.00 Lakh and above shall compulsorily pay tax electronically through the portal of the Excise and Taxation department with effect from 01-04-2014.

By order,  
Sd/-  
*Principal Secretary (E&T).*

**LABOUR AND EMPLOYMENT DEPARTMENT****NOTIFICATION***Shimla-2, the 22<sup>nd</sup> February, 2014*

**No. Sharm (A) 7-1/2005 (Awards) L-D/Shala.**—In exercise of the powers vested under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court D/Shala on the website of the Department of Labour & Employment of the Government of Himachal Pradesh.

<b>Sr. No.</b>	<b>Case No.</b>	<b>Title of the Case</b>	<b>Date of Award</b>
1.	119/2013	S/Shri Kuldeep Kumar VS Chairman Sahayta Security.	02-12-2013
2.	120/2013	Daleep Kumar V/s -do-	02-12-2013
3.	121/2013	Om Parkesh V/S -do-	02-12-2013
4.	122/2013	Roshan Lal V/S -do-	02-12-2013
5.	135/2013	Vijay Kumar V/s -do-	02-12-2013
6.	260/2012	Pawan Kumar V/s D.F.O Dalhousie	02-12-2013
7.	27/2013	Sahbo V/s D.F.O. Chamba	04-12-2013
8	195/2012	Raj Kumar V/s E.E. I&PH.Padhar	04-12-2013
9.	194/2012	Shamsher Singh V/s –do-	04-12-2013
10.	193/2012	Baldev Singh V/s -do-	04-12-2013
11.	192/2012	Mehar Singh V/s -do-	04-12-2013
12.	190/2012	Romi Chand V/s -do-	04-12-2013
13.	263/2012	Madan Lal V/s E.E. HPPWD, Ghumarwin.	06-12-2013
14.	48/2013	Shakuntla Devi V/s S.E.HPPWD, Hamirpur.	06-12-2013
15.	211/2012	Gopal Singh V/s D.F.O. Gohar.	07-12-2013
16.	507/2009	Neter Singh V/s Dir. M/s Competent Automobile.	10-12-2013
17.	148/2013	Monu Ram V/s Chairman, MG Group.	11-12-2013
18.	202/2013	Roshan Lal V/s E.E. HPPWD, J/Nagar.	13-12-2013
19.	361/2012	Inder Singh V/s E.E. HPPWD, Dharampur.	13-12-2013
20.	360/2012	Bir Singh V/S -do-	13-12-2013
21.	19/2013	Savitari Devi V/s -do-	13-12-2013
22.	209/2012	Roop Lal V/s E.E. HPPWD, Dharampur.	13-12-2013
23.	13/2013	Pardeep Kumar V/s E.E.HPPWD, Ghumarwin.	16-12-2013
24.	125/2013	Achhar Singh V/s E.E. HPPWD, J/Nagar.	17-12-2013
25.	127/2013	Dulo Ram V/s -do-	17-12-2013
26.	242/2012	Hem Raj V/s D.F.O. Mandi	18-12-2013
27.	20/2010	Ravi Kumar V/s Chairman Himachal Dental	18-12-2013
28.	142/2011	Ajit Sharma V/s Factory Manager Ranger.	20-12-2013
29.	355/2012	Veena devi V/s Principal Dr. Rajinder Parshad	23-12-2013
30.	354/2012	Ranjeet Kumar V/s -do-	23-12-2013
31.	356/2012	Arun Kumar V/s Principal Secy. Health	23-12-2013
32.	284/2012	Dhani Ram V/s M.D. H.P. State Craft.	23-12-2013
33.	278/2012	Satish Kumar V/s M.D. M/s Addinath Rabber.	23-12-2013
		Special cases received from the Hon'ble High Court of Himachal Pradesh.	

1.	93/2010	Ram Singh V/s A.E. HPSEB, Bilaspur	06-12-2013
2.	117/2011	Jarnail Singh V/s E.E. HPSEB, Bilaspur.	06-12-2013
3.	128/2011	Lal Singh V/s S.E.E. HPSEB, Gohar	18-12-2013
4.	129/2012	Shyam Singh V/s -do-	18-12-2013
5.	363/2009	Chhaje Ram V/s -do-	18-12-2013
6.	264/2010	Bahadur Singh V/s -do-	18-12-2013
7.	10/2011	Bhim Singh V/s E.E. HPSEB, Mandi	18-12-2013
8.	82/2012	Inder Singh V/s -do-	26-12-2013

By order,  
R. D. DHIMAN,  
*Pr. Secretary (Labour & Employment).*

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 27/2013

Sh. Sahbo s/o Shri Chamaru Ram, r/o Village Bathri, P.O. Janghi, Tehsil and District Chamba, H.P. ..Petitioner.

*Versus*

The Divisional Forest Officer, Chamba Forest Division, Chamba, District Chamba, H.P.  
..Respondent.

04-12-2013 Present: Petitioner with Sh. R.K. Bhardwaj, Adv.

Sh. Soham Kaushal, A.D.A. for the respondent.

RW Sh. Kirupasankar, Divisional Forest Officer, Chamba, is present. His affidavit as per Order 18 Rule 4 C.P.C. filed.

2. At this stage ld. csl. for the petitioner has made the below given statement in the Court:-

“Since the services of my client have already been reengaged by the respondent, I do not want to proceed with this reference/claim petition. It be dismissed as withdrawn.”

3. Ordered accordingly. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms. The present RW is discharged.

5. Copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

6. Be consigned to the Records after due completion.

Announced:

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P. (camp at Mandi).**

Ref. No. : 507/2009

Sh. Netar Singh s/o Sh. Narayanu Ram, c/o Sh. Karam Chand, Village Kalehli, P.O. Bajora,  
Tehsil & Distt. Kullu, H.P. ..Petitioner.

Versus

The Director, M/S Competent Automobiles Co. Ltd. Gutkar, Mandi, Distt. Mandi, H.P.  
.....Respondent.

10-12-2013 Present: Petitioner with Sh. Narinder Kumar, Adv.  
Sh. K.K. Mehta, Whole Time Director of the respondent Company,  
with Sh. Sunder Goel, Adv.

Two RWs recorded. At this stage, the parties have compromised. Statements recorded separately. The same are reproduced below verbatim for ready reference:-

“Statement of Sh. K.K.Mehta s/o late Sh. Hari Chand Mehta, age-65 yrs, Whole Time Director, M/S Competent Automobiles Company Ltd. Ghutkar, Distt.Mandi, H.P.

On. S.A.

10-12-2013

वादी हमारे पास बतौर fresh employee चपड़ासी के तौर पर join कर सकता है । वह 16-12-2013 को कम्पनी के दफ्तर गुटकर में सुबह 9 बजे काम पर report करें ।

RO & AC

P.J.  
10-12-13

व्यान वादी नेत्र सिंह s/o श्री नारायण राम आय 42 वर्ष, गांव कलेली तहसील व जिला कर्ल्लु (वादी)

On, S.A.

10-12-2013

उपरोक्त व्यान श्री K.K. Mehta, सुन लिया है इससे सहमत हूं। मैं duty पर 16-12-2013 को सुबह 9 बजे report कर दूगा। अगर मैं उस दिन काम पर न जाऊं तो मुझे प्रतिवादी के पास नौकरी पाने का या प्रतिवादी से कोई अन्य लाभ पाने को कोई हक न होगा। मैं शुरू से लेकर 15.12.2013 तक की तनखाह या seniority आदि का हकदार न हूंगा।

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समझौता हो गया है। यह दावा न चलाना चाहता हूँ। समझौते अनुसार मुकदमे का फैसला कर दिया जाए।

RO &amp; AC

P.J."  
26-10-13

2. Ordered accordingly. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
5. Be consigned to the Records after due completion.

Announced:

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

---

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 202/2013

Shri Roshan Lal s/o Shri Diffu Ram, r/o Village Kufru, P.O. Bag, Tehsil Lad Bharol, District Mandi, H.P. ....Petitioner.

*Versus*

Executive Engineer, B & R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P. ....Respondent.

13-12-2013 Present: Petitioner in person.  
Sh. Soham Kaushal, ADA for the respondent.

The petitioner/claimant Shri Roshan Lal has made the below given statement in the Court today:-

“मेरी सेवाएं प्रतिवादी द्वारा पहले ही नियमित कर दी गई हैं। मैं यह case न चलाना चाहता हूँ। दाखिल दफ्तर किया जावे। मुझे प्रतिवादी ने नौकरी के दौरान जानबूझकर कोई break न दिया।

RO &amp; AC

P.J."

Sd/-

13-12-13

2. Ordered accordingly. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of December, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 125/2013

Sh. Achhar Singh s/o Sh. Dhani Ram, r/o Village Patrain, P.O. Gangotri, Tehsil Joginder Nagar, District Mandi, H.P. .. Petitioner.

*Versus*

The Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P. .. Respondent.

17-12-2013 Present: Sh. Vijay Kaundal, Adv., csl. for the petitioner.  
 Sh. G.R. Bhardwaj, A.D.A. for the respondent.

Ld. csl. for the petitioner states at bar that his client(petitioner) has not contacted him despite intimation and sending the letter under registered cover. For these reasons, he pleads no instructions on behalf of his client(petitioner).

2. The perusal of the file discloses that the petitioner Sh. Achhar Singh was personally served on 04-09-2013 to appear before this Court on 23-09-2013. On that date, he did not come present. Sh. Vijay Kaundal, Adv. filed the memo of appearance on his behalf. On 23-09-2013, the case was adjourned to 24-10-2013 for filing the statement of claim/demand. In all more than five opportunities have been granted to the petitioner for submission of the statement of claim/demand. Last opportunity was afforded to him for today subject to payment of Rs.200/- as costs. Today neither the costs have been paid nor the statement of claim/demand has been filed. As already mentioned, ld. csl. for the petitioner has pleaded no instructions on his behalf.

3. The above noted facts amply demonstrate that the claimant/petitioner is not interested to pursue the matter. Since he has failed to file the statement of claim/demand despite the grant of several opportunities, he is not entitled to any relief. It is held that no fictional breaks in service were provided to the petitioner by the respondent (as per the reference). Parties to bear their own costs.

4. The reference is answered in the aforesaid terms.

5. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

6. Be consigned to the Records after due completion.

Announced:

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 127/2013

Sh. Dulo Ram s/o Sh. Sabratu Ram, r/o Village Salahan, P.O. Khaddar, Tehsil Lad Bharol,  
District Mandi, H.P. ....*Petitioner.*

*Versus*

The Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P.  
....*Respondent.*

17-12-2013 Present: Sh. Vijay Kaundal, Adv., csl. for the petitioner.  
Sh. G.R. Bhardwaj, A.D.A. for the respondent.

Ld. csl. for the petitioner states at bar that his client(petitioner) has not contacted him despite intimation and sending the letter under registered cover. For these reasons, he pleads no instructions on behalf of his client(petitioner).

2. The perusal of the file discloses that the petitioner Sh. Dulo Ram was personally served on 04-09-2013 to appear before this Court on 23-09-2013. On that date, he did not come present. Sh. Vijay Kaundal, Adv. filed the memo of appearance on his behalf. On 23-09-2013, the case was adjourned to 24-10-2013 for filing the statement of claim/demand. In all more than five opportunities have been granted to the petitioner for submission of the statement of claim/demand. Last opportunity was afforded to him for today subject to payment of Rs.200/- as costs. Today neither the costs have been paid nor the statement of claim/demand has been filed. As already mentioned, ld. csl. for the petitioner has pleaded no instructions on his behalf.

3. The above noted facts amply demonstrate that the claimant/petitioner is not interested to pursue the matter. Since he has failed to file the statement of claim/demand despite the grant of several opportunities, he is not entitled to any relief. It is held that no fictional breaks in service were provided to the petitioner by the respondent (as per the reference). Parties to bear their own costs.

4. The reference is answered in the aforesaid terms.

5. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

6. Be consigned to the Records after due completion.

Announced:

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P. (Camp at Una)**

Ref. No. : 142/2011

Sh. Ajit Sharma s/o Sh. Brij Lal Sharma, r/o Village Narkheda (Theru), P.O. Nara, Tehsil Barsar, Distt. Hamirpur, H.P. ....*Petitioner.*

*Versus*

The Factory Manager, M/S Rangar Breweries Ltd. Plot No. 1 & 130, Industrial Area, Mehatpur, Distt. Una, H.P. ....*Respondent.*

20-12-2013 Present: Sh. R.K. Singh Parmar, A.R. for the petitioner.  
Sh. Iqbal Singh, Adv./A.R for the respondent.

The case is listed for arguments, but the ld. A.R. for the claimant/petitioner has made the below given statement in the Court today :-

“I do not want to proceed with this reference/claim petition. It be dismissed as withdrawn. My client will issue a fresh demand notice to the respondent, if he so likes, for the redressal of his grievances.”

2. Ordered accordingly. Parties to bear their own costs.
3. reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
5. Be consigned to the Records after due completion.

Announced:

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 355/2012

Smt. Veena Devi w/o Sh. Dara Singh, C/O Sh. Ajit Singh, Village Mawa, P.O. Manae, Tehsil Harchakian, District Kangra, H.P. ....*Petitioner.*

*Versus*

1. Principal, Dr. Rajender Parsad Govt. Medical College, Tanda, Distt. Kangra, H.P.
2. Sh. Sandeep Ohri, Mess Contractor, C/O the Principal, Dr. Rajender Parsad Govt. Medical College, Tanda Distt. Kangra, H.P. ....*Respondents.*

23-12-2013 Present: Sh. Rajesh Kumar Dhiman, Adv., csl. for the petitioner.  
 Sh. Soham Kaushal, A.D.A. for the respondent No.1.  
 Sh. Jitender Sharma, Adv. csl. for the respondent No. 2.

The case is listed for consideration of the amendment application moved by the applicant/petitioner, but her ld. csl. has made the below given statement in the Court today :-

“I do not want to proceed with this reference/claim petition. It be dismissed as withdrawn. My client will issue a fresh demand notice to the respondents for the redressal of her grievances.”

2. Ordered accordingly. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
5. Be consigned to the Records after due completion.

Announced:

RAJAN GUPTA,  
 Presiding Judge,  
 Labour Court-cum-Industrial  
 Tribunal, Dharamshala, H.P

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 354/2012

Sh. Ranjeet Kumar s/o Sh. Bali Ram, r/o Village Mundla, P.O.Sunehar Tehsil Kangra,  
 District Kangra, H.P. ....Petitioner.

*Versus*

1. Principal, Dr. Rajender Parsad Govt. Medical College, Tanda, Distt. Kangra, H.P.
  2. Sh. Sandeep Ohri, Mess Contractor, C/O the Principal, Dr. Rajender Parsad Govt. Medical College, Tanda Distt. Kangra, H.P. ....Respondents.
- 23-12-2013 Present: Sh. Rajesh Kumar Dhiman, Adv., csl. for the petitioner.  
 Sh. Soham Kaushal, A.D.A. for the respondent No.1.  
 Sh. Jitender Sharma, Adv. csl. for the respondent No. 2.

The case is listed for consideration of the amendment application moved by the applicant/petitioner, but his ld. csl. has made the below given statement in the Court today :-

“I do not want to proceed with this reference/claim petition. It be dismissed as withdrawn. My client will issue a fresh demand notice to the respondents for the redressal of his grievances.”

2. Ordered accordingly. Parties to bear their own costs.

- 
3. The reference is answered in the aforesaid terms.
  4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
  5. Be consigned to the Records after due completion.

Announced:

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P*

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 356/2012

Sh. Arun Kumar s/o Sh. Surinder Kumar, r/o Village Saloti, P.O. & Tehsil Padhar, District Mandi, H.P. ....Petitioner.

*Versus*

1. The Principal Secretary (Health), Govt. of Himachal Pradesh, Shimla-2.
2. M/S GVK-EMRI-108, Through its Head of Human Resource, Solan, District Solan, H.P.
3. M/S Adecco Flexione Workforce Solutions Pvt. Ltd., Through its Managing Director, C-127, Basement Level, Satguru Infotech, Phase VIII, Industrial Area, Mohali, District Ropar, Punjab –160071 ..Respondents.

23-12-2013 Present: Sh. Vijay Kaundal, Adv., csl. for the petitioner.  
Sh. Soham Kaushal, A.D.A. for the respondent No.1.  
Sh. Jitender Sharma, Adv. vice csl. for the respondent No. 2.

Respondent No. 3 already exparte.

The case is listed for the cross-examination of PW Sh. Arun Kumar (petitioner), but his ld. csl. has made the below given statement in the Court today :-

“I do not want to proceed with this reference/claim petition. It be dismissed as withdrawn. As per the instructions received by me from my client, he has joined another job because of which he is not interested to pursue this matter.”

2. Ordered accordingly. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

- 
5. Be consigned to the Records after due completion. Announced:

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P*

---

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA , H.P.**

Ref: No. : 193/2013

Sh. Om Prakash s/o Shri Todar Ram, r/o Village Banoh, P.O. Panjalag, Tehsil Joginder Nagar, Distt. Mandi, H.P. ....*Petitioner.*

*Versus*

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P.  
....*Respondent.*

08-01-2014 Present: None for the petitioner.

Sh. Bhuvnesh Awasthi, D.D.A. for the respondent.

The claimant/petitioner Sh. Om Prakash is absent despite personal service. He was also served personally for the last date of hearing i.e 13-12-2013, but did not attend the Court. The summons sent for the service of the petitioner for 13-12-2013 were in-fact received in the Court duly served on 16-12-2013 i.e. after the expiry of the due date. Today, the case has been called out repeatedly at intervals before and after the lunch. It is already 3.00 p.m. The petitioner has not come present despite knowledge.

2. The above noted facts amply demonstrate that the petitioner (Sh.Om Prakash) is not interested to pursue the matter. Consequently, he is not entitled to any relief. For want of statement of claim/demand, it is held that no intentional breaks in service were provided to the petitioner by the respondent during the course of employment (as per the reference) as alleged.

3. Ordered accordingly. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms.

5. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

6. Be consigned to the Records after due completion. Announced:

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref. No. : 356/2012

Sh. Arun Kumar s/o Sh. Surinder Kumar, r/o Village Saloti, P.O. & Tehsil Padhar, District Mandi, H.P. ..*Petitioner.*

*Versus*

1. The Principal Secretary (Health), Govt. of Himachal Pradesh, Shimla-2.
2. M/S GVK-EMRI-108, Through its Head of Human Resource, Solan, District Solan, H.P.
3. M/S Adecco Flexione Workforce Solutions Pvt. Ltd., Through its Managing Director, C-127, Basement Level, Satguru Infotech, Phase VIII, Industrial Area, Mohali, District Ropar, Punjab-160071. ..*Respondents.*

23-12-2013 Present: Sh. Vijay Kaundal, Adv., csl. for the petitioner.  
 Sh. Soham Kaushal, A.D.A. for the respondent No.1.  
 Sh. Jitender Sharma, Adv. vice csl. for the respondent No.2.

Respondent No.3 already exparte.

The case is listed for the cross-examination of PW Sh. Arun Kumar (petitioner), but his ld. csl. has made the below given statement in the Court today :-

“I do not want to proceed with this reference/claim petition. It be dismissed as withdrawn. As per the instructions received by me from my client, he has joined another job because of which he is not interested to pursue this matter.”

2. Ordered accordingly. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
5. Be consigned to the Records after due completion

Announced:

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 193/2012

Date of Institution : 02.3.2012

Date of Decision : 04.12.2013

Shri Baldev Singh s/o Shri Kalager, r/o Village Balakrupi, P.O. & Tehsil Joginder Nagar,  
District Mandi, H.P. ..Petitioner.

*Versus*

The Executive Engineer, I.&P.H. Division, Padhar, Distt. Mandi, H.P. ..Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services/giving breaks in the services of Sh. Baldev Singh S/O Sh. Kalager, Village Balakrupi, P.O. & Tehsil Joginder Nagar, Distt. Mandi, H.P. from time to time during the years 1999 to 2001 by the Executive Engineer, IPH Division Padhar, Distt. Mandi, without complying with the provisions of section 25-F, G & H of the ibid Act, as the abandonments are not proved but admitting non availability of work during certain periods, as per policy of the Governments and availability of funds and indirectly admitting continuance employment of certain juniors, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

3. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the respondent w.e.f. 06.01.1999. He worked under the Assistant Engineer, I&PH, Sub Division, Joginder Nagar. No appointment letter/order was issued in his favour by the respondent at the time of the employment. His services used to be engaged for 15 to 20 days every month instead of the whole month by the respondent. The latter used to give him the fictional break for 10 to 15 days every month. Such breaks were given by the respondent up-to 31.12.2001. The breaks were given by the respondent so that he (petitioner) does not complete 240 days of work as required under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short) for the purpose of the regularization of his services as per the policy of the State Government. From the year 2002 onwards, he has completed more than 240 days of work in each and every calendar year of his engagement till the date of the regularization of his services. After giving the intentional/artificial breaks to him, new/fresh hands were engaged by the respondent. The newly appointed persons namely S/Sh. Om Prakash Soni and Anoop Kumar were not given any break in service by the respondent. At the time of providing the fictional breaks to him (petitioner) from 26.01.1999 to 31.12.2001, the principle of ‘last come first go’ was not followed by the respondent. Work and funds were available with the respondent at the time of his disengagement from time to time. The fictional break period is required to be counted as continuous service for the regularization of his (petitioner’s) services. The services of the persons junior to him have already been regularized by the respondent against the policy of the State. Per letter dated 27.3.2006, the Principal Secretary (IPH) to the Government of Himachal Pradesh directed all the Executive Engineers to provide the continuous work to all the daily waged workers without any break. If he (petitioner) would have been allowed to work without any break, he would have completed eight years of continuous service on 31.12.2006 and ten years of continuous service on 31.12.2008. In accordance with the policy of the State Government as framed/approved

in Mool Raj Upadhaya's case he is entitled to the regularization of his services as a work charged beldar w.e.f. 01.1.2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. Presently, he is working with the respondent/department as a beldar on work charge/regular basis. The respondent indulged in unfair labour practice. His act and conduct is/was also illegal and unjustified as well as violative of the provisions of Sections 25-F, 25-G and 25-H of the Act.

4. As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon’ble Court kindly be set aside the illegal period of breaks from 26.01.1999 to 31.12.2001 and directed to respondent to pay the wages of applicant for breaks period and counted the said period in continuity of service for the purpose of his regularization.
- (ii) The Hon’ble Court kindly be again directed to respondent to grant the work-charge status to the applicant after completion of 10 years continuous service i.e. w.e.f. 01.01.2009 in the pay scale of Rs.4900-10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2009 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon’ble Court kindly be further directed to respondent to fix the applicant is beldar seniority list of work-charge/regular cadre above to junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant”.

4. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of Himachal Pradesh is a necessary party to the petition. It has not been joined as a party/respondent. The petition is bad for non-joinder of the necessary parties. The petition is bad on account of delay and laches on the part of the petitioner.

5. On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on 06.01.1999. However, it has been denied that the artificial/fictional breaks were provided to the petitioner from time to time as alleged. The petitioner was an intermittent worker. He used to work as per his convenience. Despite the paucity of funds, continuous work for the whole months or more than 240 days was provided to the petitioner. He used to absent from his duties. As and when the petitioner reported for duty, the muster roll was issued in his name. The services of the petitioner have already been regularized w.e.f. 03.11.2010. He is debarred from claiming parity with the workmen namely S/Sh. Om Prakash and Anoop Kumar, who were employed in the year 2002. The petitioner is claiming the benefit for the years 1999 to 2001. The services of S/Sh. Om Prakash and Anup Kumar were regularized after the regularization of the services of the petitioner. Shri Om Prakash stands superannuated. The directions issued by the department per letter dated 27.3.2006 are not applicable to the case of the petitioner since he used to willfully remain absent from his duties. The policy framed in Mool Raj Upadhaya's case does not apply to the case of the petitioner. As per that policy one time benefit was given to the employees who had completed 10 years of service as on 31.12.1993 or the employees who had rendered one or more year of service, but had not completed 10 years of service as on 31.12.1993. The petitioner does not fulfill the criteria as laid down in Mool Raj Upadhaya's case. The regularization policy dated 7th May, 2010 issued by the Government of Himachal Pradesh applies to the petitioner. Under this policy, the cut off date for considering an employee for regularization of his services is 31.3.2010 on the completion of eight years continuous service with a minimum of

240 days in a calendar year subject to the availability of the post. Eight years of continuous service is only an eligibility criteria. The regularization shall be from prospective effect i.e. after the date of the issuance of orders of the regularization on completion of the codal formalities. The petitioner completed eight years of continuous service in the year 2009. His services have been rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 22.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 1999 to 2001 is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? ..OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No

Issue No.2 : Yes

Issue No.3 : Not pressed

Issue No.4 : No

Relief. : Claim petition dismissed vide operative portion of the Award.

## REASONS FOR FINDINGS

### ISSUE NO. 1

8. The petitioner Shri Baldev Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he denied that the work for 240 days or more was provided to him by the respondent during the period of the alleged breaks. He also denied that he used to remain absent because of which he could not complete 240 days of work. Further, he denied that no fictional breaks were given to him by the respondent and he has instituted a phoney petition.

9. Conversely, Shri Arun Kumar Sharma, Executive Engineer, I&PH, Padhar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the absence of the petitioner was subsequently marked fraudulently in the muster rolls. Self stated, the petitioner admitted the contents of the muster rolls and received the payment. He denied that the petitioner and others were given the breaks depending upon the availability of the work and the budget. He also denied that the persons junior to the petitioner kept on serving the department continuously.

10. Ex. RW1/A is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/F.

11. Exts. RW1/B and C are the mandays charts pertaining to S/Sh. Anup Kumar and Om Prakash, respectively.

12. Ex. RW1/D is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. Vide this letter, all the Executive Engineers were directed to engage the labourers on full month basis as the Courts have not recognized the fictional breaks and have held such persons to be in continuous employment on daily wage basis.

13. Ex. RW1/E is the copy of the letter dated 7th May, 2010 issued by the Personnel Department, Govt. of Himachal Pradesh regarding regularization of daily waged/contingent paid workers.

14. Exts. P-1 to P-32 are the copies of the muster rolls which were issued by the respondent in the name of the petitioner and other workmen.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. From the mandays charts Exs. RW1/A and F, it can be gathered that the petitioner was initially appointed on 06.1.1999. These mandays charts are not in dispute. Admittedly, the petitioner is still serving the respondent/department and his services have already been regularized.

16. Relying upon CWP No.5900/2010-F titled as Shyam Lal versus State of Himachal Pradesh through Secretary (PWD) to the Government of Himachal Pradesh, Shimla and others, decided on 18.12.2012 by our Hon'ble High Court, the ld. Authorized Representative and counsel for the petitioner argued that the work for 240 days in a year was not provided to their client by the respondent wrongly and illegally. The break period is required to be counted for the purpose of continuous service and their client is entitled to the regularization at an early date than the date on which his services have been regularized.

On the other hand, the ld. DDA urged that the work for 240 or more days in a year was provided to the petitioner by the respondent. The petitioner, who was an intermittent worker, used to remain willfully absent from his duties because of which he could not complete 240 days of work. No intentional/fictional break was provided to the petitioner at any point of time as alleged.

17. To my mind, the contention of the ld. DDA for the respondent holds the force and is sustainable for the reasons discussed hereinafter.

18. Section 25-B of the Act postulates as under:-

“25B. Definition of continuous service- For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out

or a cessation of work which is not due to any fault on the part of the workman; (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
  - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
  - (ii) two hundred and forty days, in any other case;
- (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
  - (i) ninety-five days, in the case of a workman employed below ground in a mine; and
  - (ii) one hundred and twenty days, in any other case.

**Explanation.**—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

- (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;
- (ii) he has been on leave with full wages, earned in the previous years;
- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

19. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duty bound to provide the work for 240 days in a period of 12 calendar months to the employee/petitioner. In *Digwadih Colliery v. Workmen*, AIR 1966 SC 75, it has been held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted”. The fiction of law converts service of 240 days in a period of 12 calendar months into continuous service for one complete year.

20. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

21. Now comes the all important question as to whether artificial breaks were provided by the respondent to the petitioner as alleged or not?

To my thinking, the answer to this query is in the negative. As already mentioned, the mandays charts Exs. RW1/A and F unfold that the services of the petitioner were initially engaged on 06.1.1999. From the date of his initial engagement to 31.12.2001, the petitioner was provided the work for more than 240 days in a calendar year by the respondent. However, he worked for less than 240 days and remained absent from his duties. Ex. RW1/A also highlights that the petitioner did not work for the days for which the muster rolls were issued in his name by the respondent. Sometimes he worked for less than 10 days despite the fact that the muster roll for the entire month was issued in his favour. He (petitioner) cannot be allowed to take advantage of his own wrongs. If the absence of the petitioner was wrongly marked or a line was wrongly drawn in the muster roll(s) showing that he (petitioner) has not reported for duty, or the intentional breaks were given to him, then why he did not agitate the said fact earlier or at the time of the receipt of the payment for the working days put in by him and for which he was shown present? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. The break period in question relates to the years 1999 to 2001. The industrial dispute was raised by the petitioner after more than 10 years. The facts that the petitioner remained tight lipped and complacent about his rights for such a long period as well as received the payment(s) without any protest speak volumes about the truthfulness and veracity of his claim. The act and conduct of the petitioner is nocuous to his cause. Simply because no show cause notice was issued to the petitioner by the respondent for his willful absence from duty from time to time or no disciplinary proceedings were initiated against him by the respondent/employer, the same will not come to his (petitioner's) rescue taking into consideration the facts narrated above.

22. So far as Shyam Lal's case (cited supra) is concerned, there is nothing in the judgment of the Hon'ble High Court to show that the petitioner/workman Shri Shyam Lal was provided the work for more than 240 days in a calendar year by the respondent/employer. The mandays chart produced in that case revealed that the petitioner was prevented from completing 240 days of work to deprive him the status and privileges of a work charge/regular employee. Further, in Shyam Lal's case there is nothing to establish that the payment for the actual working days was received by the workman without any protest. The same is not the situation in the present case. The catena of law laid down in Shyam Lal's case in no way helps the petitioner.

23. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner by the respondent. He is not entitled to any relief.

24. This issue is decided against the petitioner and in favour of his opponent.

#### ISSUE NO. 2

25. Taking into account my findings on issue No.1, it is held that the instant claim petition is not maintainable in the present form.

26. This issue is also decided against the petitioner.

#### ISSUE NO. 3

27. Not pressed

#### ISSUE NO. 4

28. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this

Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

29. This issue is decided in favour of the petitioner and against the respondent.

#### RELIEF (ISSUE NO. 5)

30. As a sequel to my findings on the various issues above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

31. The reference is answered in the aforesaid terms.

32. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

33. File after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of December, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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#### IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 360/2012  
Date of Institution : 05.11.2012  
Date of Decision : 13.12.2013

Shri Bir Singh s/o Shri Lala Ram, r/o Village Bhor, P.O. Jhungi, Tehsil Sarkaghat, Distt.  
Mandi, H.P. ....Petitioner.

*Versus*

The Executive Engineer, HPPWD Division Dharampur, District Mandi, H.P.

....Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
                           : Sh. Vijay Kaundal, Adv.  
 For the Respondent : Sh. Soham Kaushal, ADA

### AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Sh. Bir Singh S/O Sh. Lala Ram, Village-Bhor, P.O. Jhungi, Tehsil Sarkaghat, Distt. Mandi, H.P. by the Executive Engineer, HPPWD Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005, without following the provision of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wager on the muster rolls by the respondent on 01.1.1999. He uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, his services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). He had completed 240 days of work in each and every calendar year of his employment as well as in a block of 12 calendar months preceding the date of his illegal retrenchment i.e. 08.7.2005. Before the termination of his services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to him (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as a daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to him (petitioner) were not retrenched from service alongwith him. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to him (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith him. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her re-engagement, an opportunity of re-employment was not given to him (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their re-engagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of reemployment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. He (petitioner) is unemployed from the date of his disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

“1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent w.e.f. 08.07.2005 and directed to respondent to reinstate the services of

applicant with full back wages, seniority, in continuity of service with all consequential service benefits.

2. The Hon'ble Court further directed to respondent to regularized the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice".
3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on the muster roll in the year 1999 and he worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. He was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the non-availability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been re-engaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Re-engagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been re-engaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by him without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.
5. Per order dated 02.7.2013, following issues were struck:-
  1. Whether the termination of the services of the petitioner by the respondent w.e.f. 08-07-2005 is illegal and unjustified as alleged? ..OPP.
  2. Whether the petition is not maintainable in the present form? ..OPR.
  3. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? ..OPR.

4. Whether the claim petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR.
  
  5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? ..OPR.
  
  6. Relief.
  
  6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
  
  7. For the reasons detailed here under, my findings on the above issues are as follows:-
- Issue No.1 : Yes  
 Issue No.2 : Not pressed  
 Issue No.3 : Not pressed  
 Issue No.4 : No  
 Issue No.5 : Not pressed  
 Relief. : Claim petition allowed in part vide operative portion of the Award.

## REASONS FOR FINDINGS

### ISSUE NO.1

8. The petitioner Shri Bir Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to him (PW1) and retained in service by the respondent.

In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that 1087 other workers were removed from service alongwith him. He denied that no person junior to him has been retained in service by the respondent and his services have been dispensed with in a rightful manner.

9. Conversely, Sh. Anil Sangrai, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of his services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as a daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before reengaging her services as a daily wager, no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 04.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll in the year 1999 and he worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 04.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex.PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1999. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of re-engaging her services, an opportunity of re-employment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 3 and 5

18. Not pressed.

## ISSUE NO. 4

19. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

20. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

21. This issue is also decided in favour of the petitioner and against the respondent.

## RELIEF (ISSUE NO. 6)

22. As a sequel to my findings on the issues No.1 and 4, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- (Rupees Fifty Thousand only) to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of December, 2013.

RAJAN GUPTA,  
Presiding Judge,  
*Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 120/2013

Date of Institution : 20.08.2013

Date of Decision : 02.12.2013

Shri Daleep Kumar s/o Shri Khajana Ram, r/o VPO Kandwari, Tehsil Palampur, Distt. Kangra, H.P. ..Petitioner.

*Versus*

1. The Chairman-cum-Managing Director, Sahayta Security Services Pvt. Ltd., Hospital Road Mandi, Distt. Mandi, H.P.

2. The Director, Sahayta Security Services Pvt. Ltd. Baijnath Road, Near Kapila Nursing Home Palampur, Tehsil & P.O. Palampur, Distt. Kangra, H.P. ..Respondents.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh Rajesh Dhiman, Adv.

For the Respondents : Already exparte.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Daleep Kumar S/O Sh. Khajana Ram, VPO Kandwari, Tehsil Palampur, Distt. Kangra, H.P. by i) The Chairman-cum-Managing Director, Sahayta Security Services Pvt. Ltd., Hospital Road Mandi, Distt. Mandi, H.P. ii) The Director, Sahayta Security Services Pvt. Ltd., Baijnath Road, Near Kapila Nursing Home Palampur, Tehsil & P.O. Palampur, Distt. Kangra w.e.f. 01.5.2011 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what benefits, including reinstatement, amount of back wages, salary, seniority, past service benefits and compensation the above worker is entitled to from the above employers?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a Security Guard by the respondents on 01.10.2007. He was paid the wages @ Rs.6200/- per month. He continuously worked as such up-to 01.5.2011. On the said date his services were terminated by the respondents without any reasonable cause. The respondents used to take the duty from him 12 hours daily. He discharged his duties sincerely and to the satisfaction of his superiors. Before the disengagement of his services, neither any notice was given to him nor he was charge-sheeted for the misconduct, if any. Even no inquiry was conducted against him. One month pay in lieu of the notice period and the retrenchment compensation were also not paid to him. At the time of the termination of his services, the persons junior to him were retained in service by the respondents. The latters failed to adhere to the principle of ‘last come first go’. The persons junior to him (petitioner) are still serving the respondents. He is ready and willing to serve anywhere. He is the only earning member in the family. After the termination of his services, he and his family members are on the verge of starvation. A demand notice was served upon the respondents by him, but in vain. The act and conduct of the respondents is illegal and

unjustified. It is also violative of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

"the respondents may kindly be directed to re-engage the services of the petitioner as a Security Guard (Gun Man). It is also prayed that the period between his dis-engagement and re-engagement may kindly be ordered to be treated as duty period for the purposes of his seniority and back wages including the compensation be also awarded to the petitioner.

Any other relief as deemed just and proper by this Hon'ble Court in the facts and circumstances of the case may also kindly be granted, in the interest of justice in favour of petitioner".

3. On notice, since the respondents did not appear in the Court despite being served they were proceeded against ex parte on 17.9.2013.

4. The petitioner Shri Daleep Kumar stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

5. Sh. Madan Lal (PW2) supported the cause of the petitioner. Ex. PW2/A is the affidavit furnished by him in terms of Order 18 Rule 4 CPC.

6. The depositions made by the PWs 1 and 2 go un-rebutted and unchallenged on the record. They make it crystal clear that the petitioner served the respondents continuously from 01.10.2007 to 01.5.2011 as well as completed 240 days of work in each and every calendar year of his employment.

7. Section 25 of the Act postulates as under:-

"25-F. Conditions precedent to retrenchment of workmen.-

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

8. There is nothing on the record to show that before the termination of the services of the petitioner by the respondents, the provisions of the above quoted Section were complied with by

the latters. Therefore, it can be safely said that the respondents have contravened the provisions of Section 25-F of the Act.

9. In the statement of claim/demand and while testifying in the Court as PW1, the petitioner has failed to disclose the name of any person junior to him, who was retained in service by the respondents at the time of the termination of his services. Not only this, the petitioner has not divulged the name of any person, who was employed by the respondents after the termination in question. That being so, it cannot be said that the respondents have flouted the provisions of Sections 25-G and 25-H of the Act.

10. Taking into consideration the discussions made above, it is held that the termination of the services of the petitioner by the respondents is hit by the provisions of Section 25-F of the Act. The same is illegal and unjustified.

11. Now comes the question as to what relief should be granted to the petitioner.

12. In Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota versus Mohan Lal, Civil Appeal No. 6795 of 2013, decided on 16th August, 2013, by the Hon'ble Supreme Court of India, the issue regarding delay in raising the industrial dispute by the workman was discussed. Paras 19 and 20 of the judgment read thus:-

“19. In a subsequent decision in Balbir Singh, this Court observed that Ajaib Singh was confined to the facts and circumstances of that case. It is true that in Balbir Singh, the plea of delay was raised before the Industrial Tribunal but we would emphasize the passage from Balbir Singh where it was said: “Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially.

20. We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the I.D. Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed.”

13. While testifying in the Court as PW1, the petitioner has given his age as 46 years. It is common knowledge that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

14. Keeping in view the trite laid down in Mohan Lal's case (cited supra) and the other relevant factors including the mode and manner of appointment, nature of the employment, length of service and no delay in raising the industrial dispute by the petitioner/workman, I feel that he is entitled to the reinstatement of his services and the seniority etc.

15. Such being the situation, the instant claim petition succeeds in part and the same is partly allowed ex parte. The termination of the services of the petitioner by the respondents on

01.5.2011 is set aside and quashed. The respondents are directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 01.5.2011 except back wages. Parties to bear their own costs.

16. The reference is answered in the aforesaid terms.

17. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

18. File after due completion be consigned to the Record Room.

Announced in the open Court today this 2nd day of December, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 284/2012  
Date of Institution : 16.07.2012  
Date of Decision : 23.12.2013

Shri Dhani Ram s/o Shri Garja Ram, r/o Village and P.O. Jamthal, Tehsil Sadar, District Mandi, H.P.  
..Petitioner.

*Versus*

1. The Managing Director, H.P. State Co-op Bank Limited, The Mall, Shimla.
2. The Manager, H.P. State Co-op Bank Limited, Barmana, District Bilaspur, H.P.  
..Respondents.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner	:	Shri S.S. Sippy, AR
For the Respondent(s)	:	Sh. Rahul Gupta, Adv.
	:	Sh. R.C. Puri, Adv.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Dhani Ram S/O Shri Garja Ram, R/O Village and P.O. Jamthal, Tehsil Sadar, District Mandi, H.P. part time worker, by the (1) Managing Director, H.P. State Co-op Bank Limited, The Mall, Shimla. (2) The Manager, H.P. State Co-op Bank Limited, Barmana, District Bilaspur, H.P. w.e.f. 08-01-2011 after conducting an enquiry, is proper and justified? If not, what amount of back wages, past service benefits,

seniority and amount of compensation the above worker is entitled to from the above employer?"

2. The case of the petitioner (as set out in paras 1 to 12 of the statement of claim/demand) is reproduced below verbatim for ready reference:-

- “1. That the applicant was appointed by the management/respondent No.2 on 15th November 1999 on part time basis and was being paid the wages as per law and record till the time of termination i.e. on dated 8th January 2011.
2. That as you are aware the services of the applicant have been dispensed with without following the procedure established by law especially the provisions of standing under Industrial Dispute Act, 1947.
3. That the applicant is working with the management since the year 1999 and has worked with sincerely and honesty till the termination on dated 8/1/2011. On the false and manipulated complaint a show of inquiry against the workman was shown to have been made which runs parallel to the guidelines and the law envisaged in such like matters and the termination vide impugned communication dated 08/01/2011 which is annexed, inflicted which is just against the provisions and procedure of law as per the Industrial Dispute Act, 1947 and thus the same is assailed.
4. That the allegations contained in the complaint are nothing but the bundle of fabrication which requires through enquiry and probe and to be proved as per law of land.
5. That the allegation of payment which turned to mischief, as alleged, by the application is a conspiracy has already explained every fact that the payment which he has received is of Sh. Vikram Singh, a friend of applicant, who had instructed him to receive his payment from the counter. The applicant asked Mr. Rajesh Kumar, the cashier to give him the payment of Sh. Vikram Singh, holder of Account No.8508 and on that said Sh. Rajesh handed over the alleged payment to the applicant and the applicant as it is kept the said payment in his pocket by recognizing it of Sh. Vikram Singh. It is pertinent to mention here that the act of the applicant was honest and sincere rather it is the above mentioned cashier Rajesh, who had handed over the alleged payment by mistake to the applicant, which actually belonged to Mr. Suresh. Sh. Rajesh did not intentionally disclose the applicant that the payment which he had handed over to him is of Sh. Suresh, despite the noise around with regard to the missing amount of Sh. Suresh. The said cashier intimated Sh. Suresh that “You have received the wrong payment and the actual payment has been handed over to Sh. Dhani Ram by me” which shows that Sh. Rajesh has intentionally committed the above act just to involve the applicant into the alleged happening with the intention to throw him out of his job to accommodate in his place some relative.
6. That the applicant is victimized in an unlawful manner and has fell in a net of conspiracy hatched by the vested interest as narrated here-to-fore and the termination inflicted upon the applicant is violative of natural justice and the law of the land, which is mandatory to be complied with.
7. That the impugned letter no. BMN/2744/2011 issued on dated 8<sup>th</sup> January 2011 to the applicant through which the services of the applicant were terminated which is

based on the wrong and false facts placed before your good self and the concocted story which is against the directive principles of natural justice and the procedure of law in such like matters and thus the same is void in the eyes of law and needs to be scrutinized judiciously at your end and till then the applicant be allowed to work on his same place with immediate effects as the retrenchment is in contravention of the procedure provided in the Industrial Dispute Act.

8. That while dispensing with the services of the applicant, no enquiry, charge-sheet of notice was ever issued or conducted and as such the provisions U/S 25-F, 25-G etc. of the Industrial Dispute Act were violated and thrown to wind while dispensing with the services of the applicant which are mandatory and not at the choice of anyone as has been done by you in the present case and as such the action at this level of inflicting termination upon the applicant is illegal, unconstitutional, uncalled for, void and the same is without sanction of law and deserves to be taken back.
  9. That no charge sheet for unsatisfactory work has been served and No Enquiry has been held and the termination is in hire and fire.
  10. That I have tried my best to secure an employment elsewhere but am facing unemployment from the date of illegal termination till date.
  11. That the termination of applicant tantamount's to the retrenchment which has been caused without any reason and more so at the back of the applicant without affording the opportunity of being heard and coming to the conclusion at your own in the absence of looking to the side of applicant and further the enquiries are held and conducted after the charge sheet, leading of evidence affording the opportunity upon the workman to defend himself through the defense assistant etc., the whole procedure has been thrown to wind and the legal requirements were missing as worth the name which could not sustain in the eye of law especially after the security of entire matter before your good-self.
  12. That my termination is in hire and fire. That from the above, it would show that my termination w.e.f. 08-01-2011 is illegal, void and against the law of the land and I am deemed to be in continuous service and am entitled to full back wages and other attendant benefits".
3. On notice, the respondents appeared. They filed joint reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable. No industrial dispute exists between the parties because of which the provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short) are not applicable. This Court has no jurisdiction to entertain and decide the reference/claim petition. The petitioner has concealed the true and material facts from the Court. He is estopped from filing the claim petition by his act, conduct and acquiescence. The petitioner has no cause of action and locus standi to sue. The claim is malafide.

On merits, paras 1 to 12 of the reply read thus:-

"1. The contents of this para of the claim are wrong. The petitioner was appointed part time for 4 hours @ Rs.6.50/- per hour w.e.f. 16.11.1999 vide letter dated 20.03.2001. Copy of letter is attached herewith. The services of the petitioner were dispensed and the

petitioner was removed as a part time worker in accordance with law w.e.f. 03.01.2011. Copy of Memorandum is attached herewith.

2. The contents of this para of the claim are wrong and the same are denied. The services of the petitioner were dispensed with after following the prescribed procedure and after holding a detailed enquiry. Infact the petitioner had done mischief in the bank and an explanation was called from the petitioner vide letter dated 05.01.2010. Copy of letter dated 05.01.2010 is attached. The petitioner has admitted his deeds vide letter dated 11.01.2010. Thereafter, notice dated 30.07.2010 was served upon the petitioner by District Manager. Copy of notice is attached. The petitioner while submitting his reply/statement dated 02.08.2010 had admitted the charges against him. Copy of statement is attached herewith. Thereafter, after receiving another complaint, a show cause notice dated 01.11.2010 was served upon the petitioner and as such the services of the petitioner were dispensed with in accordance with law. Fact finding enquiry was conducted vide report dated 28.08.2010. Copy of report is attached.

3. The contents of this para of the claim are wrong and the same are denied. It is incorrect that the petitioner had worked with sincerely and honestly as alleged. Infact, numerous complaints were received against the applicant and the applicant was warned and cautioned many times. Even the applicant apologized many times by giving in writing and acts of cheating and forgery were even accepted by the applicant before the Labour Inspector, Bilaspur. The applicant had accepted his guilt of withdrawing the amounts from various accounts of SB-2251, 2580, CA-861 and 950 in a deceitful manner. The applicant vide letter dated 02.11.2008 tendered his apology and made the payments back to the above said accounts on 13.12.2008. The applicant affixed the office stamp of Branch Manager on No Dues Certificate to Sh. Krishan Ram loanee of house loan account No. 28 and handed over the specimen signature of the Branch Manager to the loanee and this act was also accepted by the applicant vide letter dated 05.01.2010. The applicant has again apologized on 11.01.2010 in this regard. Copy of letters dated 02.11.2008, 05.01.2010 and 11.01.2010 are attached herewith. The applicant had intentionally received wrong payment of Sh. Suresh Chaudhary and handed over back to cashier when there was hue and cry in the bank and the applicant vide letter dated 09.11.2010 had admitted the said fact. Copy of letter dated 09.11.2010 is attached herewith. The above said acts of the applicant has lowered the reputation of the bank. The applicant had admitted his guilt of mischief and forgery many times, and as such is not entitled for any relief.

4 to 6. The contents of these paras of the claim are wrong and the same are denied. A detailed reply has been given above. It is incorrect that the applicant is victimized and the applicant was hatched in conspiracy as alleged. There is no violation of the principal of natural justice. The applicant was a part time worker only.

7 & 8. The contents of these paras of the claim petition are wrong. A detailed reply has been given above. The order dated 03.01.2011 is legal valid and the same has been passed after a detailed enquiry. The applicant is required to prove the averments made in this para of the claim.

9 to 12. The contents of these paras of the claim petition are wrong, false, incorrect and the same are denied. It is incorrect that the applicant was condemned unheard. Infact, a detailed enquiry was conducted and the applicant participated in the said enquiry and admitted his guilt".

In these circumstances, the respondents pray that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition and refuted the objections put forth by the respondents. It has been pleaded that the management has failed to supply the copies of the allegations, inquiry proceedings and inquiry report to him before removing from service. No proper charge-sheet was served upon him. The allegations of cheating and forgery could not be established by the respondents/management on the basis of the papers produced before the inquiry officer. A concocted story has been framed by the respondents just to harass an innocent workman.

5. Per order dated 15.01.2013, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondents w.e.f. 08-01-2011 is illegal and unjustified as alleged? ..OPP.
  2. Whether the petitioner has a cause of action? ..OPP.
  3. Whether the petitioner has the locus-standi to sue? ..OPP.
  4. Whether the petition is not maintainable in the present form? ..OPR.
  5. Whether this Court has no jurisdiction to hear and decide the matter? ..OPR.
  6. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? ..OPR.
  7. Whether the petitioner has concealed the true and material facts from the Court as alleged. If so, its effect? ..OPR.
  8. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : No

Issue No. 4 : Yes

Issue No. 5 : Not pressed

Issue No. 6 : Yes

Issue No. 7 : Yes

Relief. : Claim petition dismissed vide operative portion of the Award.

## REASONS FOR FINDINGS

### ISSUE NO.1

8. The petitioner Shri Dhani Ram stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that his services were engaged as a part time safai karamchari in Barmana branch of the bank for four hours daily on payment of Rs.6.50/- per hour. No show cause notice was served upon him by the Branch Manager on 05.1.2010, whereby, he was

asked to show cause as to why he issued a no dues certificate in the name of Shri Krishnu Ram after affixing the stamp of the Branch Manager and withdrew the money from the accounts of different customers in a wrongful manner. He denied that the reply Ex. R1 was submitted by him to the show cause notice dated 05.1.2010, which bears his signatures. He admitted that an inquiry was conducted and the letter dated 30.7.2010 in that behalf was received by him. He denied that during the inquiry proceedings, he had made a statement dated 02.8.2010, the copy of which is Ex. R2, before the inquiry officer (District Manager). He admitted that the District Manager had forwarded his inquiry report dated 28.8.2010 to the General Manager of the Bank at Shimla. He denied that earlier also he used to commit frauds in the bank and admitted his guilt vide letters Exts. R3 to R5. He denied that Exs. R1 to R5 bear his signatures in the red circles. He also denied that Ex. R6 i.e. the authority letter given by him in favour of Shri Sunder Singh Sippy (Authorized Representative) has been signed by him. He denied that he withdrew Rs.1,89,000/- from the bank fraudulently and, thereafter, deposited the same. He admitted that after holding the inquiry, his services were retrenched by the respondent No.2 in obedience to the head office letter dated 08.1.2011. He also admitted that his services were terminated as per the rules as well as he was only a part time safai karamchari and not a daily wager.

9. Conversely, Dr. R.P. Nanta, Sr. Law Officer, H.P. State Co-operative Bank Ltd., The Mall, Shimla testified as RW1. While placing on record Ex. RW1/B i.e. the copy of the general power of attorney executed in his name by the Managing Director (respondent No.1) and the President of the Bank, he corroborated on oath the contents of the reply submitted by the respondents. Ex. RW1/A is the affidavit filed by RW1 in terms of Order 18 Rule 4 CPC. In the cross-examination, he stated that the services of the petitioner were terminated after holding inquiry. The charge-sheet is served upon an employee only if he denies the charges leveled against him in the memo/show cause notice. During the inquiry proceedings, the petitioner was associated and heard. Self stated, the petitioner had admitted his guilt in the reply to the memo/show cause notice served upon him where after a fact finding inquiry was held. The petitioner admitted that he had committed the fraud and misappropriated the public money. He denied that the services of the petitioner were terminated unlawfully.

10. Ex. PW1/B is the copy of the memo dated 08.1.2011 handed over to the petitioner by the respondent No.2. It depicts that in compliance with head office letter dated 03.1.2011, the services of the petitioner were dispensed with immediate effect from 08.1.2011 (afternoon).

11. Ex. RW1/C is the copy of the letter dated 20.3.2001 written by the Dy. General Manager of the Bank to the District Manager, Bilaspur. It unfolds that the appointment of Shri Dhani Ram (petitioner) as part time sweeper in Branch Office, Barmana, for performing four hours duty daily @ Rs.6.50/- per hour w.e.f. 6.11.1999 was confirmed.

12. Ex. RW1/D is the copy of a memorandum dated 03.1.2011 served upon the petitioner by the respondent No.1 (Managing Director). It clarifies that in view of the admission of guilt by the delinquent (petitioner), the inquiry report was accepted by the Managing Director and the petitioner was ordered to be removed from service with immediate effect.

13. Ex. RW1/E is the copy of the memo/explanation letter dated 05.1.2010 served upon the petitioner by the respondent No.2 with regard to the mischief done in the bank.

14. Ex. RW1/F is the copy of the letter dated 30.7.2010 written to the petitioner by the District Manager. The letter shows that Shri H.R. Sharma (District Manager) was entrusted the inquiry to look into the mischiefs committed by the petitioner. The inquiry officer called upon the petitioner to attend the inquiry proceedings on 02.8.2010 at 11.30 A.M. in the premises of the bank at Barmana.

15. Ex. RW1/G is the copy of the letter dated 28.8.2010 written by the District Manager (inquiry officer) to the General Manager of the bank at Shimla. Vide this letter, fact finding inquiry report was forwarded by the inquiry officer to the General Manager.

16. Ex. RW1/H is the copy of a memo/show cause notice dated 01.11.2010 served upon the petitioner by the respondent No.2 regarding the misappropriation of Rs.1,89,000/-.

17. It is the admitted case of the parties that the services of the petitioner were engaged as a part time safai karamchari w.e.f. 15/16 November, 1999 and he worked as such up-to 08.1.2011. On that day, the services of the petitioner were terminated by the respondent No.2 in the afternoon per letter Ex. PW1/B in compliance to the head office letter dated 03.1.2011, the copy of which is Ex. RW1/D. Admittedly, the services of the petitioner were dispensed with by the respondents as a measure of punishment.

18. Banks are financial institutions. The depositors repose confidence in the bank employees. The money of the customers remains in trust with the bank or its employees.

19. The evidence available on the record goes to show that during the course of employment the petitioner committed various acts of forgery, fraud and cheating in the bank. Time and again memos/show cause notices were served upon him and his explanations were called. Ultimately, a fact finding inquiry was instituted against the petitioner by the bank and Shri H.R. Sharma, District Manager, was appointed as the inquiry officer. The petitioner was duly associated and participated in the fact finding inquiry. Statement dated 02.8.2010, the copy of which is Ex. R2 was made by the petitioner during the inquiry proceedings. The petitioner admitted his guilt. The inquiry officer submitted his report dated 28.8.2010 (Ex. RW1/G) to the General Manager of the bank.

20. On the basis of the inquiry report, the respondent No.1 viz. the Managing Director of the bank served a memo dated 03.1.2011 (Ex. RW1/D) on the petitioner. The copy of the memo was also forwarded to the respondent No. 2, who terminated the services of the petitioner vide letter dated 08.1.2011, the copy of which is Ex. PW1/B.

21. Since the petitioner time and again admitted his guilt and was indicted by the inquiry officer at the time of fact finding inquiry, I am at a loss to understand as to how it lies in his (petitioner's) mouth to say that no proper inquiry was conducted against him or his services have been disengaged by the respondents in contravention of the provisions of the Act.

22. The act and conduct of the petitioner is such that he even denied his signatures on Ex. R6 i.e. the authority letter executed by him in favour of his authorized representative Shri Sunder Singh Sippy. This speaks volumes about the truthfulness and veracity of the claim of the petitioner.

23. Otherwise too, during his cross-examination, the petitioner categorically admitted that his services were terminated by the respondents as per the prescribed procedure only after holding an inquiry.

24. Keeping in mind the above noted facts and the admissions made by the petitioner, he cannot be permitted to countenance that the disengagement of his services by the respondents is violative of the provisions of the Act.

25. It appears to me that the avarice of the petitioner to grab the job and money has forced him to prefer a totally false and baseless claim. He is not entitled to any relief.

26. This issue is decided against the petitioner and in favour of the respondents.

**ISSUES NO. 2 TO 4**

27. Taking into account my findings on issue No.1 above, it is held that the petitioner has no cause of action. He has no locus standi to sue. The claim is not maintainable in the present form. The same is malafide.

28. These issues are also decided against the petitioner.

**ISSUE NO.5**

29. Not pressed.

**ISSUES NO. 6 AND 7**

30. Keeping in mind my findings on the issues No.1 to 4, it is concluded that the petitioner is estopped from filing the claim petition by his act, conduct and acquiescence. He has concealed the true and material facts from the Court because of which he is required to be non-suited.

31. These issues too are decided against the petitioner and in favour of his opponents.

**RELIEF (ISSUE NO. 8)**

32. As a sequel to my findings on the various issues, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed with costs quantified as Rs.5000/- (Five thousand only).

33. The reference is answered in the aforesaid terms.

34. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

35. File after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of December, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 211/2012  
Date of Institution : 17.04.2012  
Date of Decision : 07.12.2013

Shri Gopal Singh s/o Shri Netar Singh, r/o Village Gurian, P.O. Tachi, Distt. Mandi, H.P.  
..Petitioner.

*Versus*

The D.F.O. Gohar (Nachan), Tehsil Chachiot, Distt. Mandi, H.P.

*..Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
                           : Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Soham Kaushal, ADA

## AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Gopal Singh S/O Sh. Netar Singh, Village-Guran, P.O. Tachi, Distt. Mandi, H.P. by The D.F.O. Gohar (Nachan), Tehsil Chachiot, Distt. Mandi, H.P. w.e.f. 01.4.2007, without complying with the provisions contained in Section 25-F of the Industrial Disputes Act, 1947, is legal & justified, if not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

3. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wager on 01.1.2004 by the respondent. No appointment order/letter was issued in his name by the respondent/department. He (petitioner) worked in Thachi and Bung Beats under the supervision of Shri Chanra Singh up-to 31.3.2007. During the period of his employment, the payment was made to him by the respondent on bill voucher basis. On 1st April, 2007, his services were terminated by the respondent by a verbal order. Before the termination of his services, neither any notice was given to him nor an inquiry was conducted against him for the misconduct, if any. Wages in lieu of the notice period and the retrenchment compensation were also not paid to him by the respondent/department. He had completed more than 240 days of work in each and every calendar year of his engagement as well as in a block of 12 calendar months prior to the date of his termination. At the time of the disengagement of his services, the persons junior to him were retained in service by the respondent. Not only this, after his termination new/fresh hands have been appointed by the respondent. He was not given an opportunity of reemployment. A demand notice was served upon the respondent by him. Conciliation proceedings were initiated by the Labour-cum-Conciliation Officer, Mandi, but in vain. From the date of his unlawful termination, he is unemployed. The act and conduct of the respondent is illegal and unjustified. It is also violative of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, he (petitioner) prays that the termination order dated 01.4.2007 be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petitioner has no cause of action. He was appointed as a part time para-professional in HPFSR project (HP Forest Sector Reforms Project). The project stands closed w.e.f. 31.3.2007. The petitioner is/was not a workman as defined under the Act. He has misrepresented

himself and has approached the Court by concealing the material facts. The claim petition is bad on account of delay and laches on the part of the petitioner.

On merits, it has been denied that the services of the petitioner were engaged as a daily wager on 01.1.2004 without issuing any appointment letter/order in his name. Actually, village Guran i.e. the village of the petitioner falls under the territorial jurisdiction of Nahan Forest Division. In the year 2003, a Pilot Project financed by DFID (UK Government) i.e. HPFSR was introduced to promote the changed way of working by the forest department as well as the formation and empowerment the village level institution. As per the guiding principles of the project to liaison with the forest line staff and user group including the implementation of various project activities in the pilot location i.e. the concerned village the appointment of the para-professional was to be made. Accordingly, the panchayat of the area i.e. Gram Panchayat, Murah in the general house dated 14.9.2003 passed a resolution recommending the name of the petitioner for being appointed as a para-professional under the HPFSR project. Pursuant to the recommendation made by the gram panchayat, the services of the petitioner were engaged as a para-professional vide letter dated 26.9.2003 on payment of the consolidated sum/honorarium of Rs.1200/- per month. The appointment of the petitioner was coterminous with the closure of the project which came to an end on 31.3.2007. A para-professional was required to work for four hours daily in his area for 15 to 18 days in a month. The engagement of the para-professional (petitioner) was on part time basis. For the remaining hours of the day he was to engage himself in other gainful activities. The petitioner was initially paid the honorarium of Rs.1200/- per mensem which was enhanced to Rs.1500/- each month. Since the petitioner was employed in a project and his employment was coterminous with the closure/completion of the project, there was no need to issue any notice to him or comply with the provisions of Section 25-F of the Act. The project was implemented only in one pilot site i.e. village Guran under his (respondent's) territorial jurisdiction. No other paraprofessional was appointed except the petitioner. Therefore, the question of retaining any person junior to the petitioner in service or engaging/re-engaging new/fresh hands does not arise. The petitioner is precluded from claiming parity with the daily waged workmen engaged by him (respondent) for his routine functions and operations. Since the petitioner was working in a project which has come to an end, he is not entitled to any protection under the Act. The instant industrial dispute has been raised by the petitioner at a belated stage. He is employed in a Mini Hydro Electric Project in village Guran. He (petitioner) is also working as an agriculturist. No provision of the Act has been flouted. The petition is meritless. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. He (petitioner) is a workman. No appointment letter was issued in his name to the effect that his services have been engaged in a project for a particular period. Even no contract in this regard was executed between him (petitioner) and his adversary.

5. Per order dated 05.10.2012, following issues were struck:

1. Whether the services of the petitioner have been terminated by the respondent w.e.f. 01.4.2007 wrongly and illegally as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petitioner has not come to the Court with clean hands. If so, its effect? ..OPR.

4. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No

Issue No.2 : Yes

Issue No.3 : Yes

Issue No.4 : No

Relief. : Claim petition dismissed vide operative portion of the Award.

## REASONS FOR FINDINGS

### ISSUES NO.1 AND 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. The petitioner Shri Gopal Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that in his village Gurian, a UK Government aided project was started in the year 2003. He feigned ignorance about the fact that one post of para-professional was there in the project whose duty was to maintain liaison between the villagers and the forest officers. His panchayat was Murah in the year 2003. He denied that on 14.9.2003, the gram panchayat had passed a resolution recommending his (petitioner's) name for being appointed as a para-professional in the project. He also denied that on the basis of the recommendation made by the local panchayat, an appointment letter (the copy of which is Ex.R1) was issued in his favour by the respondent. He admitted that initially he was being paid the honorarium @ Rs.1,200/- per month which was enhanced to Rs.1,500/- per mensem. He denied that his duty used to be four hours daily and he worked for 15-18 days in the whole month. He also denied that after the duty of four hours he used to do his own work including the work of agriculture. He admitted that the term of the project ended on 31.3.2007, where after, his services were not engaged by the respondent. He also admitted that only his village Gurian falls under the territorial jurisdiction of the respondent. Further, he admitted that after the end/closure of the project, none is serving in the project. He denied that he is working in Mini Hydro Electric Project in his village. He admitted that in the year 2003, Shri Megh Singh was a member of his panchayat. The resolution Ex. R2 bears the signatures of Shri Shesh Ram, the then Pradhan of the gram panchayat. He denied that Ex. R2 is the copy of the same resolution on the basis of which his services were engaged by the respondent in the project pursuant to the recommendation made by the panchayat. He refuted that the certificate Ex. PW1/D produced by him is false as well as to gain the employment and other undue benefits he has instituted a phoney petition.

10. Conversely, Shri V.K. Babu, Divisional Forest Officer, Gohar at Nachan (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the services of the petitioner were engaged as a daily wager. He admitted that no notice was served upon the petitioner before the disengagement of

his services and he (petitioner) had completed more than 240 days of work in each and every calendar year of his employment. Self stated, as per guidelines of the project, the petitioner worked on part time basis for four hours per day. He denied that the services of the petitioner were terminated in a wrongful manner.

11. RW2 is Shri Shesh Ram. He testified that he remained the Pradhan of Gram Panchayat, Murah, Sub Tehsil Bali Chowki up-to the year 2005. He knows Shri Gopal Singh (petitioner). Work of forest reforms had started in his panchayat. The petitioner was appointed as a group organizer. The name of the petitioner for the engagement of his services as a group organizer was recommended by the panchayat vide a resolution, the copy of which is Ex. R2. The resolution has been signed by him (RW2), Shri Megh Singh (Panch), other ward members and the villagers. The project continued up-to the year 2007.

In the cross-examination, he stated that the petitioner served during currency of the project.

12. Ex. PW1/B is the copy of the demand notice dated 25.7.2007 served upon the respondent by the petitioner under Section 2-A of the Act.

13. Ex. PW1/C is the detail of the honorarium paid to the petitioner by the respondent during the period the former worked as a group organizer in HPFSR Project, Murah. It corresponds to Ex. RC.

14. Ex. PW1/D is the copy of a certificate dated 05.9.2012 issued by the Pradhan, Gram Panchayat, Murah, District Mandi to the effect that for the forest work which continued in the panchayat from the years 2004 to 2007, the services of the petitioner were engaged by the forest department.

15. Ex. RA is the copy of a letter written by the Conservator of Forests, Mandi to the CCF, M&E, Sunder Nagar. In this letter, it has been mentioned that three pilot sites in Mandi Forest Circle are functioning at present. One of the sites is Murah Gurian which is located in Thachi Range of Nachan Forest Division.

16. Ex. RB is the copy of the guidelines relating to HPFSR Project. It also contains the clause regarding the appointment of the para-professional and his duties.

17. At the very outset, I will like to mention that in view of the provisions contained in Section 2(s) of the Act, the ld. ADA for the respondent fairly conceded at bar that the petitioner is/was a workman under the respondent.

18. It is the admitted case of the parties that the services of the petitioner were engaged on 01.1.2004 and he worked up-to 31.3.2007.

The version of the petitioner is that he was employed as a daily wager by the respondent. His services have been terminated wrongly and illegally by the respondent. While denying these facts, the respondent has pleaded that the services of the petitioner were engaged as a part time paraprofessional/group organizer in the project i.e. HPFSR project pursuant to the resolution passed by the local gram panchayat. The petitioner used to work for four hours daily. He was supposed to work only for 15-18 days in the complete month. His appointment was coterminous with the end/closure of the project. The services of the petitioner could not be continued after 31.3.2007 since the project, which was aided by the UK Government, came to an end. The entire amount of honorarium stands paid to the petitioner for the period he served in the project. For these reasons, it cannot be said that the disengagement of the services of the petitioner has been wrongly ordered. No provision of the Act has been contravened.

19. To my mind, the assertions put forth by the respondent hold the ground and are sustainable. The petitioner (PW1) in his cross-examination admitted that in his village Guran, a UK Government aided project had started in the year 2003. Of course, he showed his ignorance about the fact that his services were engaged as a para-professional in the project. He admitted that honorarium was being paid to him every month and the project ended in 31.3.2007. He (PW1) also admitted that after the completion of the project no one is working in the project.

20. Ex. RB is the copy of the guidelines relating to HPFSR Project. A paraprofessional was to be appointed for the implementation of various project activities and maintaining the liaison. Resolution dated 14.9.2003, the copy of which is Ex. R2, was passed by Gram Panchayat, Murah i.e. the Panchayat of the petitioner. This resolution bears the signatures of Shri Shesh Ram (RW2), the then Pradhan of Gram Panchayat, Murah, Ward Panch Shri Megh Singh and the villagers. A glance of the resolution goes to show that the name of the petitioner was recommended by the gram panchayat keeping in view his qualifications for being appointed as a group organizer/para-professional in HPFSR project in village Guran i.e. the village of the petitioner. Village Guran was one of the three pilot sites in Mandi Forest Circle for the execution/implementation of the project as is evident from the letter Ex. RA issued by the Conservator of Forests, Mandi. Admittedly, the village of the petitioner i.e. village/pilot site falls within the territorial jurisdiction of the respondent.

21. After the recommendation made by the gram panchayat per resolution dated 14.9.2003 (Ex. R2), the letter dated 26.9.2003 (Ex. R1) was issued by the respondent relating to the selection of the group organizer. This letter clearly shows that the petitioner was selected as a group organizer after the detailed discussions with the Range Officer and local Panchayat Pradhan etc. There is no denial of the fact that after the issuance of letter dated 26.9.2003 (Ex. R1), the petitioner joined the service. Ex. PW1/C i.e. the document produced by the petitioner clearly shows that he was paid the honorarium from January, 2004 to March, 2007 for working as a group organizer in HPFSR project. Ex. RC corresponds to Ex. PW1/C.

22. The petitioner (PW1) in his cross-examination admitted that previously honorarium of Rs.1,200/- per month was being paid to him by the respondent. Later on, monthly honorarium of Rs.1500/- was paid to him by the respondent/department. Admittedly, the term of the project came to an end on 31.3.2007. Since the services of the petitioner were engaged in a project and were coterminous with the project period, I am at a loss to understand as to how it lies in his mouth to say that his services have been unlawfully terminated by the respondent. Non continuation of the services of the petitioner after 31.3.2007 i.e. on completion of the project period does not fall within the mischief of the word 'retrenchment' as defined in Section 2(oo) of the Act.

23. Otherwise too, the petitioner (PW1) in his cross-examination admitted that after the completion of the project no one is working in the project. He (petitioner) was the only group organizer/para-professional employed in the project. The petitioner has not disclosed the name of any person junior to him who was retained in service by the respondent at the time of the alleged illegal termination of his services. He (petitioner) has also failed to divulge the name of any person who was employed by the respondent in the project after the termination in question. Such being the situation, I have no hesitation to conclude that none of the provisions of the Act has been flouted by the respondent. The provisions of Sections 25-F, 25-G and 25-H of the Act are not attracted in this case.

24. To be fair to the Id. AR and counsel for the petitioner, I will like to say that in support of their case they have cited a ruling titled as Block Development Officer, Paragpur versus Yoginder Kumar and others, LPA No. 57 of 2008, decided on 16.4.2012 by the Hon'ble High Court of Himachal Pradesh at Shimla.

I have gone through the above noted case. In the said case no letters of appointment were issued indicating that the employees were employed against a particular project. The names of the employees were shown in the muster rolls which did not state that the muster rolls are in respect of a particular project. The same is not the situation in the present case. The oral and documentary evidence available on the record makes it crystal clear that the services of Shri Gopal Singh (petitioner) were engaged in a project only after his name was recommended by the gram panchayat for being appointed as a group organizer/para-professional. No muster roll was issued in the name of the petitioner. Only honorarium was paid to him for working in the project as shown in Exts. PW1/C and RC. With humility, I will like to add that the trite laid down in Yoginder Kumar's case in no way comes to the rescue of the petitioner.

25. That being so, it is held that none of the provisions of the Act has been flouted by the respondent. The disengagement of the services of the petitioner is neither illegal nor unjustified. The claim petition is not maintainable. It appears to me that the avarice of the petitioner to grab the Govt. job and money has forced him to prefer a totally false and baseless claim. He is not entitled to any relief.

26. These issues are decided against the petitioner and in favour of the respondent.

#### ISSUE NO. 3

27. Keeping in view my findings on issues No.1 and 2 above, it is held that the petitioner has not come to the Court with clean hands.

28. This issue is also decided against him.

#### ISSUE NO. 4

29. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

30. This issue is decided in favour of the petitioner and against the respondent.

#### RELIEF (ISSUE NO. 5)

31. As a sequel to my findings on the issues No.1 to 3, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed with costs quantified as Rs.3,000/- (Three thousand only).

32. The reference is answered in the aforesaid terms.

33. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

34. File after due completion be consigned to the Record Room.

Announced in the open Court today this 7th day of December, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 119/2013  
 Date of Institution : 20.08.2013  
 Date of Decision : 02.12.2013

Shri Kuldeep Kumar s/o Shri Om Parkash, r/o VPO Lahla, Tehsil Palampur, Distt. Kangra,  
 H.P. ....Petitioner.

*Versus*

1. The Chairman-cum-Managing Director, Sahayta Security Services Pvt. Ltd., Hospital Road Mandi, Distt. Mandi, H.P.

2. The Director, Sahayta Security Services Pvt. Ltd. Baijnath Road, Near Kapila Nursing Home Palampur, Tehsil & P.O. Palampur, Distt. Kangra, H.P. ....Respondents.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh Rajesh Dhiman, Adv.

For the Respondents : Already exparte.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Kuldeep Kumar S/O Sh. Om Parkash, VPO Lahla, Tehsil Palampur, Distt. Kangra, H.P. by i) The Chairman-cum-Managing Director, Sahayta Security Services Pvt. Ltd., Hospital Road Mandi, Distt. Mandi, H.P. ii) The Director, Sahayta Security Services Pvt. Ltd., Baijnath Road, Near Kapila Nursing Home Palampur, Tehsil & P.O. Palampur, Distt. Kangra w.e.f. 01.8.2012 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what benefits, including reinstatement, amount of back wages, salary, seniority, past service benefits and compensation the above worker is entitled to from the above employers?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a Security Guard by the respondents on 10.4.2009. He was paid the wages @ Rs.4,600/- per month. He continuously worked as such up-to 01.8.2012. On the said date, his services were terminated by the respondents without any reasonable cause. The respondents used to take the duty from him 12 hours daily. He discharged his duties sincerely and to the satisfaction of his superiors. Before the disengagement of his services, neither any notice was given to him nor he was charge-sheeted for the misconduct, if any. Even no inquiry was conducted against him. One month pay in lieu of the notice period and the retrenchment compensation were also not paid to him. At the time of the termination of his services, the persons junior to him were retained in service by the respondents. The latters failed to adhere to the principle of 'last come first go'. The persons junior to him (petitioner) are still serving the respondents. He is ready and willing to serve anywhere. He is the only earning member in the family. After the termination of his services, he and his family members are on the verge of starvation. A demand notice was served upon the respondents by him, but in vain. The act and conduct of the respondents is illegal and unjustified. It is also violative of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

"the respondents may kindly be directed to re-engage the services of the petitioner as a Security Guard (Guard). It is also prayed that the period between his dis-engagement and reengagement may kindly be ordered to be treated as duty period for the purposes of his seniority and back wages including the compensation be also awarded to the petitioner.

Any other relief as deemed just and proper by this Hon'ble Court in the facts and circumstances of the case may also kindly be granted, in the interest of justice in favour of petitioner"

3. On notice, since the respondents did not appear in the Court despite being served, they were proceeded against ex parte on 17.9.2013.

4. The petitioner Shri Kuldeep Kumar stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

5. Sh. Madan Lal (PW2) supported the cause of the petitioner. Ex. PW2/A is the affidavit furnished by him in terms of Order 18 Rule 4 CPC.

6. The depositions made by the PWs 1 and 2 go un-rebutted and unchallenged on the record. They make it crystal clear that the petitioner served the respondents continuously from 10.4.2009 to 01.8.2012 as well as completed 240 days of work in each and every calendar year of his employment.

7. Section 25 of the Act postulates as under:-

**"25-F. Conditions precedent to retrenchment of workmen.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

8. There is nothing on the record to show that before the termination of the services of the petitioner by the respondents, the provisions of the above quoted Section were complied with by the latters. Therefore, it can be safely said that the respondents have contravened the provisions of Section 25-F of the Act.

9. In the statement of claim/demand and while testifying in the Court as PW1, the petitioner has failed to disclose the name of any person junior to him, who was retained in service by the respondents at the time of the termination of his services. Not only this, the petitioner has not divulged the name of any person, who was employed by the respondents after the termination in question. That being so, it cannot be said that the respondents have flouted the provisions of Sections 25-G and 25-H of the Act.

10. Taking into consideration the discussions made above, it is held that the termination of the services of the petitioner by the respondents is hit by the provisions of Section 25-F of the Act. The same is illegal and unjustified.

11. Now comes the question as to what relief should be granted to the petitioner?

12. In Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota versus Mohan Lal, Civil Appeal No. 6795 of 2013, decided on 16th August, 2013, by the Hon'ble Supreme Court of India, the issue regarding delay in raising the industrial dispute by the workman was discussed. Paras 19 and 20 of the judgment read thus:-

- “19. In a subsequent decision in Balbir Singh, this Court observed that Ajaib Singh was confined to the facts and circumstances of that case. It is true that in Balbir Singh, the plea of delay was raised before the Industrial Tribunal but we would emphasize the passage from Balbir Singh where it was said: “Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially.
- 20. We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the I.D. Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed.”

13. While testifying in the Court as PW1, the petitioner has given his age as 42 years. It is common knowledge that a young man like the petitioner will not sit at home during the period he

is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

14. Keeping in view the trite laid down in Mohan Lal's case (cited supra) and the other relevant factors including the mode and manner of appointment, nature of the employment, length of service and no delay in raising the industrial dispute by the petitioner/workman, I feel that he is entitled to the reinstatement of his services and the seniority etc.

15. Such being the situation, the instant claim petition succeeds in part and the same is partly allowed exparte. The termination of the services of the petitioner by the respondents on 01.8.2012 is set aside and quashed. The respondents are directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 01.8.2012 except back wages. Parties to bear their own costs.

16. The reference is answered in the aforesaid terms.

17. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

18. File after due completion be consigned to the Record Room.

Announced in the open Court today this 2nd day of December, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 121/2013  
 Date of Institution : 20.08.2013  
 Date of Decision : 02.12.2013

Shri Om Parkash s/o Shri Dhanu Ram, r/o Village Kanarthu, P.O. Phtahar, Tehsil Baijnath,  
 Distt. Kangra, H.P. ....Petitioner.

*Versus*

1. The Chairman-cum-Managing Director, Sahayta Security Services Pvt. Ltd., Hospital Road Mandi, Distt. Mandi, H.P.

2. The Director, Sahayta Security Services Pvt. Ltd. Baijnath Road, Near Kapila Nursing Home Palampur, Tehsil & P.O. Palampur, Distt. Kangra, H.P. ....Respondents.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh Rajesh Dhiman, Adv.  
 For the Respondents : Already exparte.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Om Parkash S/O Sh. Dhanu Ram, Village Kanarthu, P.O. Phtahar, Tehsil Baijnath, Distt. Kangra, H.P. by i) The Chairman-cum-Managing Director, Sahayta Security Services Pvt. Ltd., Hospital Road Mandi, Distt. Mandi, H.P. ii) The Director, Sahayta Security Services Pvt. Ltd., Baijnath Road, Near Kapila Nursing Home Palampur, Tehsil & P.O. Palampur, Distt. Kangra w.e.f. 31.7.2012 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what benefits, including reinstatement, amount of back wages, salary, seniority, past service benefits and compensation the above worker is entitled to from the above employers?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a Security Guard by the respondents on 09.11.2009. He was paid the wages @ Rs.4600/- per month. He continuously worked as such up-to 31.7.2012. On the said date, his services were terminated by the respondents without any reasonable cause. The respondents used to take the duty from him 12 hours daily. He discharged his duties sincerely and to the satisfaction of his superiors. Before the disengagement of his services, neither any notice was given to him nor he was charge-sheeted for the misconduct, if any. Even no inquiry was conducted against him. One month pay in lieu of the notice period and the retrenchment compensation were also not paid to him. At the time of the termination of his services, the persons junior to him were retained in service by the respondents. The latters failed to adhere to the principle of ‘last come first go’. The persons junior to him (petitioner) are still serving the respondents. He is ready and willing to serve anywhere. He is the only earning member in the family. After the termination of his services, he and his family members are on the verge of starvation. A demand notice was served upon the respondents by him, but in vain. The act and conduct of the respondents is illegal and unjustified. It is also violative of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

“the respondents may kindly be directed to re-engage the services of the petitioner as a Security Guard (Guard). It is also prayed that the period between his dis-engagement and reengagement may kindly be ordered to be treated as duty period for the purposes of his seniority and back wages including the compensation be also awarded to the petitioner.

Any other relief as deemed just and proper by this Hon’ble Court in the facts and circumstances of the case may also kindly be granted, in the interest of justice in favour of petitioner”.

3. On notice, since the respondents did not appear in the Court despite being served, they were proceeded against ex parte on 17.9.2013.

4. The petitioner Shri Om Parkash stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

5. Sh. Madan Lal (PW2) supported the cause of the petitioner. Ex. PW2/A is the affidavit furnished by him in terms of Order 18 Rule 4 CPC.

6. The depositions made by the PWs 1 and 2 go un-rebutted and unchallenged on the record. They make it crystal clear that the petitioner served the respondents continuously from 09.11.2009 to 31.7.2012 as well as completed 240 days of work in each and every calendar year of his employment.

7. Section 25 of the Act postulates as under:-

**“25-F. Conditions precedent to retrenchment of workmen.-**No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

8. There is nothing on the record to show that before the termination of the services of the petitioner by the respondents, the provisions of the above quoted Section were complied with by the latters. Therefore, it can be safely said that the respondents have contravened the provisions of Section 25-F of the Act.

9. In the statement of claim/demand and while testifying in the Court as PW1, the petitioner has failed to disclose the name of any person junior to him, who was retained in service by the respondents at the time of the termination of his services. Not only this, the petitioner has not divulged the name of any person, who was employed by the respondents after the termination in question. That being so, it cannot be said that the respondents have flouted the provisions of Sections 25-G and 25-H of the Act.

10. Taking into consideration the discussions made above, it is held that the termination of the services of the petitioner by the respondents is hit by the provisions of Section 25-F of the Act. The same is illegal and unjustified.

11. Now comes the question as to what relief should be granted to the petitioner? 12. In Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota versus Mohan Lal, Civil Appeal No. 6795 of 2013, decided on 16th August, 2013, by the Hon'ble Supreme Court of India, the issue regarding delay in raising the industrial dispute by the workman was discussed. Paras 19 and 20 of the judgment read thus:-

“19. In a subsequent decision in Balbir Singh, this Court observed that Ajaib Singh was confined to the facts and circumstances of that case. It is true that in Balbir Singh, the plea of delay was raised before the Industrial Tribunal but we would emphasize the passage from Balbir Singh where it was said: “Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts

and circumstances of the case. No doubt the discretion is to be exercised judicially.

20. We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the I.D. Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed.”

13. While testifying in the Court as PW1, the petitioner has given his age as 41 years. It is common knowledge that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

14. Keeping in view the trite laid down in Mohan Lal’s case cited supra and the other relevant factors including the mode and manner of appointment, nature of the employment, length of service and no delay in raising the industrial dispute by the petitioner/workman, I feel that he is entitled to the reinstatement of his services and the seniority etc.

15. Such being the situation, the instant claim petition succeeds in part and the same is partly allowed ex parte. The termination of the services of the petitioner by the respondents on 31.7.2012 is set aside and quashed. The respondents are directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 31.7.2012 except back wages. Parties to bear their own costs.

16. The reference is answered in the aforesaid terms.

17. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

18. File after due completion be consigned to the Record Room.

Announced in the open Court today this 2nd day of December, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 122/2013  
Date of Institution : 20.08.2013  
Date of Decision : 02.12.2013

Shri Roshan Lal s/o late Shri Mangat Ram, r/o Village Malghota, P.O. Kharanal, Tehsil Baijnath, Distt. Kangra, H.P. ....Petitioner.

*Versus*

1. The Chairman-cum-Managing Director, Sahayta Security Services Pvt. Ltd., Hospital Road Mandi, Distt. Mandi, H.P.

2. The Director, Sahayta Security Services Pvt. Ltd. Baijnath Road, Near Kapila Nursing Home Palampur, Tehsil & P.O. Palampur, Distt. Kangra, H.P. ..*Respondents.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh Rajesh Dhiman, Adv.

For the Respondents : Already ex parte.

### **AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Roshan Lal S/O Late Sh. Mangat Ram, Village Malghota, P.O. Kharanal, Tehsil Baijnath, Distt. Kangra, H.P. by i) The Chairman-cum-Managing Director, Sahayta Security Services Pvt. Ltd., Hospital Road Mandi, Distt. Mandi, H.P. ii) The Director, Sahayta Security Services Pvt. Ltd., Baijnath Road, Near Kapila Nursing Home Palampur, Tehsil & P.O. Palampur, Distt. Kangra w.e.f. 23.3.2012 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what benefits, including reinstatement, amount of back wages, salary, seniority, past service benefits and compensation the above worker is entitled to from the above employers?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a Security Guard by the respondents on 01.08.2008. He was paid the wages @ Rs.6200/- per month. He continuously worked as such up-to 23.3.2012. On the said date, his services were terminated by the respondents without any reasonable cause. The respondents used to take the duty from him 12 hours daily. He discharged his duties sincerely and to the satisfaction of his superiors. Before the disengagement of his services, neither any notice was given to him nor he was charge-sheeted for the misconduct, if any. Even no inquiry was conducted against him. One month pay in lieu of the notice period and the retrenchment compensation were also not paid to him. At the time of the termination of his services, the persons junior to him were retained in service by the respondents. The latters failed to adhere to the principle of ‘last come first go’. The persons junior to him (petitioner) are still serving the respondents. He is ready and willing to serve anywhere. He is the only earning member in the family. After the termination of his services, he and his family members are on the verge of starvation. A demand notice was served upon the respondents by him, but in vain. The act and conduct of the respondents is illegal and unjustified. It is also violative of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

“the respondents may kindly be directed to re-engage the services of the petitioner as a Security Guard (Gun Man). It is also prayed that the period between his dis-engagement and re-engagement may kindly be ordered to be treated as duty period for the purposes of his seniority and back wages including the compensation be also awarded to the petitioner. Any

other relief as deemed just and proper by this Hon'ble Court in the facts and circumstances of the case may also kindly be granted, in the interest of justice in favour of petitioner".

3. On notice, since the respondents did not appear in the Court despite being served, they were proceeded against ex parte on 17.9.2013.

4. The petitioner Shri Roshan Lal stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

5. Sh. Madan Lal (PW2) supported the cause of the petitioner. Ex. PW2/A is the affidavit furnished by him in terms of Order 18 Rule 4 CPC.

6. The deposition made by the PWs 1 and 2 go un-rebutted and unchallenged on the record. They make it crystal clear that the petitioner served the respondents continuously from 01.08.2008 to 23.3.2012 as well as completed 240 days of work in each and every calendar year of his employment.

7. Section 25 of the Act postulates as under:-

**"25-F. Conditions precedent to retrenchment of workmen.-**No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

8. There is nothing on the record to show that before the termination of the services of the petitioner by the respondents, the provisions of the above quoted Section were complied with by the latters. Therefore, it can be safely said that the respondents have contravened the provisions of Section 25-F of the Act.

9. In the statement of claim/demand and while testifying in the Court as PW1, the petitioner has failed to disclose the name of any person junior to him, who was retained in service by the respondents at the time of the termination of his services. Not only this, the petitioner has not divulged the name of any person, who was employed by the respondents after the termination in question. That being so it cannot be said that the respondents have flouted the provisions of Sections 25-G and 25-H of the Act.

10. Taking into consideration the discussions made above, it is held that the termination of the services of the petitioner by the respondents is hit by the provisions of Section 25-F of the Act. The same is illegal and unjustified.

11. Now comes the question as to what relief should be granted to the petitioner?

12. In Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota versus Mohan Lal, Civil Appeal No. 6795 of 2013, decided on 16th August, 2013, by the Hon'ble Supreme Court of India, the issue regarding delay in raising the industrial dispute by the workman was discussed. Paras 19 and 20 of the judgment read thus:-

- “19. In a subsequent decision in Balbir Singh, this Court observed that Ajaib Singh was confined to the facts and circumstances of that case. It is true that in Balbir Singh, the plea of delay was raised before the Industrial Tribunal but we would emphasize the passage from Balbir Singh where it was said: “Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially.
20. We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the I.D. Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed.”

13. While testifying in the Court as PW1, the petitioner has given his age as 59 years. It is common knowledge that a person like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

14. Keeping in view the trite laid down in Mohan Lal's case (cited supra) and the other relevant factors including the mode and manner of appointment, nature of the employment, length of service and no delay in raising the industrial dispute by the petitioner/workman, I feel that he is entitled to the reinstatement of his services and the seniority etc.

15. Such being the situation, the instant claim petition succeeds in part and the same is partly allowed ex parte. The termination of the services of the petitioner by the respondents on 23.3.2012 is set aside and quashed. The respondents are directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 23.3.2012 except back wages. Parties to bear their own costs.

16. The reference is answered in the aforesaid terms.

17. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

18. File after due completion be consigned to the Record Room.

Announced in the open Court today this 2nd day of December, 2013.

RAJAN GUPTA,  
Presiding Judge,  
*Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 135/2013

Date of Institution : 29.08.2013

Date of Decision : 02.12.2013

Shri Vijay Kumar s/o Shri Ram Singh, r/o Village Upper Majhetali, P.O. Pathiar, Tehsil & Distt. Kangra, H.P.  
..Petitioner.

*Versus*

10. The Chairman-cum-Managing Director, Sahayta Security Services Pvt. Ltd., Hospital Road Mandi, Distt. Mandi, H.P.

11. The Director, Sahayta Security Services Pvt. Ltd. Baijnath Road, Near Kapila Nursing Home Palampur, Tehsil & P.O. Palampur, Distt. Kangra, H.P. ..Respondents.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh Rajesh Dhiman, Adv.

For the Respondents : Already exparte.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Vijay Kumar S/O Sh. Ram Singh, Village Upper Majhetali, PO Pathiar, Tehsil & Distt. Kangra, H.P. by i) The Chairman-cum-Managing Director, Sahayta Security Services Pvt. Ltd., Hospital Road Mandi, Distt. Mandi, H.P. ii) The Director, Sahayta Security Services Pvt. Ltd., Baijnath Road, Near Kapila Nursing Home Palampur, Tehsil & P.O. Palampur, Distt. Kangra w.e.f. 23.3.2012 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what benefits, including reinstatement, amount of back wages, salary, seniority, past service benefits and compensation the above worker is entitled to from the above employers?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a Security Guard by the respondents on 01.11.2007. He was paid the wages @ Rs.6200/- per month. He continuously worked as such up-to 23.3.2012. On the said date, his services were terminated by the respondents without any reasonable cause. The respondents used to take the duty from him 12 hours daily. He discharged his duties sincerely and to the satisfaction of his superiors. Before the disengagement of his services, neither any notice was given to him nor he was charge-sheeted for the misconduct, if any. Even no inquiry was conducted against him. One month pay in lieu of the notice period and the retrenchment compensation were also not paid to him. At the time of the termination of his services, the persons junior to him were retained in service by the respondents. The latters failed to adhere to the principle of ‘last come first go’. The persons junior to him (petitioner) are still serving the respondents. He is ready and willing to serve anywhere. He is the only earning member in the family. After the termination of his services, he and his family members are on the verge of starvation. A demand notice was served upon the respondents by him, but in vain. The act and conduct of the respondents is illegal and

unjustified. It is also violative of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

"the respondents may kindly be directed to re-engage the services of the petitioner as a Security Guard (Gun Man). It is also prayed that the period between his dis-engagement and re-engagement may kindly be ordered to be treated as duty period for the purposes of his seniority and back wages including the compensation be also awarded to the petitioner. Any other relief as deemed just and proper by this Hon'ble Court in the facts and circumstances of the case may also kindly be granted, in the interest of justice in favour of petitioner".

3. On notice, since the respondents did not appear in the Court despite being served they were proceeded against ex parte on 23.9.2013.

4. The petitioner Shri Vijay Kumar stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

5. Sh. Madan Lal (PW2) supported the cause of the petitioner. Ex. PW2/A is the affidavit furnished by him in terms of Order 18 Rule 4 CPC.

6. The depositions made by the PWs 1 and 2 go un-rebutted and unchallenged on the record. They make it crystal clear that the petitioner served the respondents continuously from 01.11.2007 to 23.3.2012 as well as completed 240 days of work in each and every calendar year of his employment.

7. Section 25 of the Act postulates as under:-

**"25-F. Conditions precedent to retrenchment of workmen.-**No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

8. There is nothing on the record to show that before the termination of the services of the petitioner by the respondents, the provisions of the above quoted Section were complied with by the latters. Therefore, it can be safely said that the respondents have contravened the provisions of Section 25-F of the Act.

9. In the statement of claim/demand and while testifying in the Court as PW1, the petitioner has failed to disclose the name of any person junior to him, who was retained in service by the respondents at the time of the termination of his services. Not only this, the petitioner has not divulged the name of any person, who was employed by the respondents after the termination in question. That being so it cannot be said that the respondents have flouted the provisions of Sections 25-G and 25-H of the Act.

10. Taking into consideration the discussions made above, it is held that the termination of the services of the petitioner by the respondents is hit by the provisions of Section 25-F of the Act. The same is illegal and unjustified.

11. Now comes the question as to what relief should be granted to the petitioner? 12. In Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota versus Mohan Lal, Civil Appeal No. 6795 of 2013, decided on 16th August, 2013, by the Hon'ble Supreme Court of India, the issue regarding delay in raising the industrial dispute by the workman was discussed. Paras 19 and 20 of the judgment read thus:-

“19. In a subsequent decision in Balbir Singh, this Court observed that Ajaib Singh was confined to the facts and circumstances of that case. It is true that in Balbir Singh, the plea of delay was raised before the Industrial Tribunal but we would emphasize the passage from Balbir Singh where it was said: “Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially.”

20. We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the I.D. Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed.”

13. While testifying in the Court as PW1, the petitioner has given his age as 30 years. It is common knowledge that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

14. Keeping in view the trite laid down in Mohan Lal's case (cited supra) and the other relevant factors including the mode and manner of appointment, nature of the employment, length of service and no delay in raising the industrial dispute by the petitioner/workman, I feel that he is entitled to the reinstatement of his services and the seniority etc.

15. Such being the situation, the instant claim petition succeeds in part and the same is partly allowed exparte. The termination of the services of the petitioner by the respondents on 23.3.2012 is set aside and quashed. The respondents are directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 23.3.2012 except back wages. Parties to bear their own costs.

16. The reference is answered in the aforesaid terms.

17. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

18. File after due completion be consigned to the Record Room.

Announced in the open Court today this 2nd day of December, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 260/2012  
Date of Institution : 15.06.2012  
Date of Decision : 02.12.2013

Shri Pawan Kumar s/o Shri Partap Singh, r/o Village and P.O. Manuhata, Tehsil Bhatiyat, District Chamba, H.P. ..*Petitioner.*

*Versus*

The Divisional Forest Officer, Forest Division, Dalhousie, District Chamba, H.P. ..*Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Aman Guleria, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Pawan Kumar S/O Shri Partap Singh, R/O Village and P.O. Manuhata, Tehsil Bhatiyat, District Chamba, H.P. by the Divisional Forest Officer, Forest Division, Dalhousie, District Chamba, H.P. from time to time year, 1999 to 2007 and finally w.e.f. June, 2008 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, past service benefits, seniority and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged nursery chowkidar-cum-beldar by the respondent in the month of January, 1999. He continuously worked as such up-to the year 2009 in Manuhta Nursery, Chowari Forest Range, as well as completed 240 days of work in each and every calendar year of

his employment. In the year 2009, his services were terminated by the respondent without assigning any reason. Before the disengagement of his services, neither any notice was given to him nor the wages in lieu of the notice period and the retrenchment compensation were paid. At the time of his termination, the persons junior to him were retained in service by the respondent. The latter failed to abide by the principle of 'last come first go'. Not only this, after the retrenchment of his services new/fresh hands have been engaged by the respondent. He was not given an opportunity of re-employment. He (petitioner) never remained absent from his duties. He did not work for the period the work was not provided to him by the respondent/department. The persons junior to him served the respondent continuously. Their services have also been regularized under the eight years regularization policy of the State Government. If artificial breaks in service would not have been given to him and his services would not have been terminated unlawfully, he must have been regularized along-with his juniors or w.e.f. 01.1.2007 as he (petitioner) completed eight years continuous service with 240 days in each calendar year up-to 31.12.2006. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). He (petitioner) has been rendered helpless by the respondent/department after taking the services during the prime of his youth. From the date of his termination, he is unemployed. He and his family are facing starvation. He also suffered mental agony at the hands of the respondent.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

"the petitioner may kindly be ordered to be re-instated w.e.f. the date of his illegal and arbitrary retrenchment/termination along with full back wages and continuity of service and frictional breaks given to him from time to time be taken in to account for the purpose of continuity of services for the reasons as stated in the aforesaid paras, in the interest of justice as the action of the department is illegal and un-justified. It is further prayed that the services of the applicant be regularized retrospectively w.e.f. 1/1/2007 or from such date from which date the services of his junior workman have been regularized in the interest of justice.

(I) Any other relief as the Hon'ble court may deem fit".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The claimant/petitioner has no cause of action. He is estopped from filing the claim petition by his act and conduct. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, it has been owned that the relationship of employer and employee (workman) exists between the parties. However, it has been denied that the services of the petitioner were engaged in the month of January, 1999. Actually, the petitioner was initially appointed as a daily waged beldar in the month of February, 1999. Forestry works are of seasonal nature depending upon the availability of the work and the budget. Neither intentional breaks in service were provided to the petitioner at any point of time nor his services were finally disengaged in the year 2009 as alleged. The petitioner was in the habit of absenting from his duty without any intimation to him (respondent). After working till the month of June, 2008, the petitioner voluntarily left the job. Thereafter, he never reported for duty. No person junior to the petitioner has been retained in service. No new/fresh hands have been appointed. Since the petitioner willfully left the job, he is debarred from claiming parity with the workmen who worked in continuity. He is not entitled to any protection under the Act. The instant industrial dispute has been raised by the petitioner at a

belated stage. The same has become stale. The petitioner is gainfully employed as an agriculturist. No provision of the Act has been flouted. The petition is devoid of any merit.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. No rejoinder has been filed by the petitioner.

5. Per order dated 15.12.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent from time to time during the year 1999 to 2007 and finally w.e.f. the month of June, 2008 is illegal and unjustified as alleged? ..OPP.

2. Whether the petitioner has a cause of action? ..OPP.

3. Whether the petition is not maintainable in the present form? ..OPR.

4. Whether the petition is hit by the vice of delay and laches on the part of the petitioner as alleged. If so, its effect? ..OPR.

5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? ..OPR.

6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No

Issue No.2 : No

Issue No.3 : Yes

Issue No.4 : No

Issue No.5 : Not pressed

Relief. : Claim petition dismissed vide operative portion of the Award.

## REASONS FOR FINDINGS

### ISSUE NO.1

8. The petitioner Shri Pawan Kumar stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also stated that the services of the persons junior to him namely S/Sh. Prem Chand and Tilak Raj have already been regularized by the respondent. S/Shri Kasturi Lal and Tilu were appointed by the respondent after the disengagement of his services.

In the cross-examination, he denied that he had joined the service in the month of February, 1999. He has not produced any document to show that he was initially employed by the respondent in the month of January, 1999. He denied that at the time of his engagement, it was conveyed to him that he has been employed for carrying out the seasonal forestry works and the work for the whole year cannot be provided to him. He also denied that he used to remain absent from his duties

and after June, 2008, he abandoned the job. He refuted that he did not complete 240 days of work in any calendar year of his employment. He admitted that he earns his livelihood by doing the work of agriculture. He denied that he has instituted a phoney petition.

9. Conversely, Shri R.C. Goma, Divisional Forest Officer, Dalhousie (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that after the termination of the services of the petitioner, Shri Tilu Ram was appointed. When the petitioner left the job, no notice was given to him asking him to resume the duty. Even no departmental proceedings were initiated against the petitioner. He denied that the services of the petitioner were terminated in a wrongful manner.

10. Ex. PW1/B is the copy of the demand notice served upon the respondent by the petitioner under Section 2-A of the Act.

11. Ex. RW1/B is the detail of the mandays relating to Shri Tilak Raj and four others.

12. Ex. RW1/C is the copy of the Award dated 24.4.2012 passed by this Court in Reference No.667/2008 titled as Shri Kasturi Lal vs. The Divisional Forest Officer, Forest Division, Dalhousie, Distt. Chamba.

13. Ex. RW1/D is the seniority list/mandays chart pertaining to Shri Desh Raj and ors.

14. Exts. RW1/E, RA and PA are the mandays charts in respect of the petitioner.

15. Ex. RW1/F is the list of contingent paid workers, who served the respondent/department up-to 31.12.1997 with 240 days of continuous service in each and every calendar year.

16. Ex. RW1/G is the letter dated 13.6.2013 written by the Range Forest Officer, Chowari. It reveals that Shri Tilu never served in Chowari Range (as alleged by the petitioner).

17. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily waged beldar. The petitioner has maintained that he was employed in the month of January, 1999. The respondent has pleaded that the services of the petitioner were initially engaged in the month of February, 1999. The petitioner has failed to produce any documentary evidence to show that his services were initially engaged by the respondent in the month of January, 1999 as claimed. Rather, the mandays charts Exts. RW1/E and RA make it crystal clear that the petitioner was initially employed on 1st February, 1999.

18. The respondent has not placed/exhibited on the file any document evidencing that the services of the petitioner were engaged for carrying out the seasonal forestry works only to his knowledge. The mandays chart Ex. RA clarifies that in the year 2001, work for 245 days was provided to the petitioner by the respondent. Of course, the petitioner served the respondent for less than 240 days. A person who is given the work for more than 240 days in a calendar year cannot be termed as a seasonal worker by any stretch of imagination.

19. The petitioner has maintained that from the year 1999 i.e. date/month of his initial appointment to the year 2007, artificial/fictional breaks in service were provided to him by the respondent unlawfully. The said fact has been denied by the latter. The mandays chart Ex. RA depicts that the petitioner used to remain absent from his duties. He did not work for the days the muster rolls were issued in his name by the respondent/department. As already mentioned in the

year 2001 i.e. from 01.3.2001 to 31.12.2001, the work for 245 days was provided to the petitioner by the respondent. However, he served the respondent/department for only 222 days. In the year 2005, the petitioner did not serve the respondent/department even for a single day. If intentional breaks were being provided to the petitioner by the respondent, then why he (petitioner) did not agitate the said fact earlier or at the time of the receipt of the money for the working days actually put in by him? The reasons to that effect being obscure are noxious to his cause. The petitioner cannot be permitted to take the advantage of his own wrongs, particularly when he did not serve the respondent for a single day in the year 2005 as well as remained tight lipped and complacent about his rights for more than eight years. Taking into consideration these facts, to my mind, it can be easily said that no artificial/fictional breaks in service were given to the petitioner by the respondent from the date/month of his initial appointment to the year 2007.

20. Now comes the question as to whether the services of the petitioner were finally terminated by the respondent in the month of June, 2008 wrongly and illegally or not?

The petitioner has contended that he served the respondent/department up-to the year 2009. In the said year his services were dispensed with by the respondent arbitrarily and illegally. While denying the said fact, the respondent has pleaded that the petitioner worked only up-to the month of June, 2008 and, thereafter, left the job of his own accord and free volition.

21. The mandays charts Exts. RW1/E, PA and RA make it abundantly clear that the petitioner worked with the respondent only up-to 30th June, 2008. In the month of June, 2008, he served the respondent/department for 290 days despite the fact that the muster roll for 30 days was issued in his name.

22. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fail to report for duty, it cannot be presumed that he has left/abandoned the job. It is there in the statement of the respondent (RW1) that no notice was served upon the petitioner calling upon him to resume the duties after he allegedly left the same. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established. The mandays charts relating to the petitioner clarify that he did not complete 240 days of work in a block of 12 calendar months anterior to the date/month of the termination of his services i.e. June, 2008 as envisaged under Section 25-B of the Act. The provisions of Section 25-F of the Act are thus not attracted in this case.

23. In his proof affidavit Ex. PW1/A, the petitioner has mentioned that S/Shri Prem Chand, Tilak Raj, Yogesh, Vratiya, and Garv Singh are junior to him, whose services have already been regularized by the respondent. Exts. RW1/B and D unfold that Shri Tilak Raj etc. were appointed by the respondent prior to the engagement of the services of the petitioner. They are senior to him.

24. In para 3 of the proof affidavit Ex. PW1/A, it has been highlighted that after the termination of the services of the petitioner S/Shri Kasturi Lal and Tili were appointed by the respondent. Ex. RW1/C i.e. copy of the Award dated 24.4.2012 pronounced by this Court in Reference No.667/2008 titled as Kasturi Lal vs. The Divisional Forest Officer, Forest Division, Dalhousie goes to show that the services of Shri Kasturi Lal were engaged by the respondent in the month of January, 1987 i.e. much before the appointment of the petitioner. So far as Shri Tili Ram is concerned, Range Forest Officer, Chowari has reported in writing per letter Ex. RW1/G that no such person was ever employed or served under him after the petitioner left the job.

25. It is often said and rightly too that the men may tell lies but the documents do not. It is trite that the documentary evidence as compared to the oral evidence has to be given weight. The

petitioner has failed to lead any cogent and convincing evidence (including the documentary evidence) to prove that any person junior to him is serving the respondent/department or after the termination of his services, new/fresh hands have been engaged by the respondent. That being so, it cannot be said that the provisions of Sections 25-G and 25-H of the Act have been contravened by the respondent.

26. Such being the situation, I have no hesitation to conclude that neither artificial/fictional breaks in service were provided to the petitioner by the respondent nor the services of the former have been disengaged by the latter in derogation of the provisions of the Act. It appears to me that the avarice of the petitioner to grab the Government job and money has forced him to prefer a totally false and baseless claim. He is not entitled to any relief.

27. This issue is decided against the petitioner and in favour of his adversary.

#### ISSUES NO. 2 AND 3

28. Keeping in view my findings on issue No.1 above, it is held that the petitioner has no cause of action. The claim petition is not maintainable in the present form.

29. These issues are also decided against the petitioner.

#### ISSUE NO.4

30. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

31. This issue is decided in favour of the petitioner and against the respondent.

#### ISSUE NO. 5

32. Not pressed.

#### RELIEF (ISSUE NO.6)

33. As a sequel to my findings on the issues No.1 to 3, the present claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed with costs quantified as Rs.3,000/- (Three thousand only).

34. The reference is answered in the aforesaid terms.

35. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

36. File after due completion be consigned to the Record Room.

Announced in the open Court today this 2nd day of December, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 195/2012  
Date of Institution : 03.3.2012  
Date of Decision : 04.12.2013

Shri Raj Kumar s/o Shri Joginder Singh, r/o Village Dhalar, P.O. Joginder Nagar, Tehsil Joginder Nagar, District Mandi, H.P. ....Petitioner.

*Versus*

The Executive Engineer, I.&P.H. Division, Padhar, Distt. Mandi, H.P. ....Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

### AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services/giving breaks in the services of Shri Raj Kumar S/O Shri Joginder Singh, Village Dhalar, P.O. Joginder Nagar, Tehsil Joginder Nagar, District Mandi, H.P. from time to time during years 1999 to 2001 by the Executive Engineer, I.&P.H. Division Padhar, District Mandi, H.P. without complying with the provisions of Section 25-F, G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting non availability of work during certain periods, as per policy of the Government and availability of funds and indirectly admitting continuance employment of certain juniors, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the respondent w.e.f. 06.1.1999. He worked under the Assistant

Engineer, I&PH Sub Division, Joginder Nagar. No appointment letter/order was issued in his favour by the respondent at the time of the employment. His services used to be engaged for 15 to 20 days every month instead of the whole month by the respondent. The latter used to give him the fictional break for 10 to 15 days every month. Such breaks were given by the respondent up-to 31.12.2001. The breaks were given by the respondent so that he (petitioner) does not complete 240 days of work as required under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short) for the purpose of the regularization of his services as per the policy of the State Government. From the year 2002 onwards, he has completed more than 240 days of work in each and every calendar year of his engagement till the date of the regularization of his services. After giving the intentional/artificial breaks to him, new/fresh hands were engaged by the respondent. The newly appointed persons namely S/Sh. Om Prakash Soni and Anoop Kumar were not given any break in service by the respondent. At the time of providing the fictional breaks to him (petitioner) from 26.1.1999 to 31.12.2001, the principle of 'last come first go' was not followed by the respondent. Work and funds were available with the respondent at the time of his disengagement from time to time. The fictional break period is required to be counted as continuous service for the regularization of his (petitioner's) services. The services of the persons junior to him have already been regularized by the respondent against the policy of the State. Per letter dated 27.3.2006, the Principal Secretary (IPH) to the Government of Himachal Pradesh directed all the Executive Engineers to provide the continuous work to all the daily waged workers without any break. If he (petitioner) would have been allowed to work without any break, he would have completed eight years of continuous service on 31.12.2006 and ten years of continuous service on 31.12.2008. In accordance with the policy of the State Government as framed/approved in Mool Raj Upadhyaya's case he is entitled to the regularization of his services as a work charged beldar w.e.f. 01.1.2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. Presently, he is working with the respondent/department as a beldar on work charge/regular basis. The respondent indulged in unfair labour practice. His act and conduct is/was also illegal and unjustified as well as violative of the provisions of Sections 25-F, 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon’ble Court kindly be set aside the illegal period of breaks from 26.1.1999 to 31.12.2001 and directed to respondent to pay the wages of applicant for breaks period and counted the said period in continuity of service for the purpose of his regularization.
- (ii) The Hon’ble Court kindly be again directed to respondent to grant the work-charge status to the applicant after completion of 10 years continuous service i.e. w.e.f. 01.01.2009 in the pay scale of Rs.4900-10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2009 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (vi) The Hon’ble Court kindly be further directed to respondent to fix the applicant is beldar seniority list of work-charge/regular cadre above to junior.
- (vii) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of Himachal Pradesh is a necessary party to the petition. It has not

been joined as a party/respondent. The petition is bad for non-joinder of the necessary parties. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on 06.1.1999. However, it has been denied that the artificial/fictional breaks were provided to the petitioner from time to time as alleged. The petitioner was an intermittent worker. He used to work as per his convenience. Despite the paucity of funds, continuous work for the whole months or more than 240 days was provided to the petitioner. He used to absent from his duties. As and when the petitioner reported for duty, the muster roll was issued in his name. The services of the petitioner have already been regularized w.e.f. 03.11.2010. He is debarred from claiming parity with the workmen namely S/Sh. Om Prakash and Anoop Kumar, who were employed in the year 2002. The petitioner is claiming the benefit for the years 1999 to 2001. The services of S/Sh. Om Prakash and Anup Kumar were regularized after the regularization of the services of the petitioner. Shri Om Prakash stands superannuated. The directions issued by the department per letter dated 27.3.2006 are not applicable to the case of the petitioner since he used to willfully remain absent from his duties. The policy framed in Mool Raj Upadhyaya's case does not apply to the case of the petitioner. As per that policy one time benefit was given to the employees who had completed 10 years of service as on 31.12.1993 or the employees who had rendered one or more year of service, but had not completed 10 years of service as on 31.12.1993. The petitioner does not fulfill the criteria as laid down in Mool Raj Upadhyaya's case. The regularization policy dated 7th May, 2010 issued by the Government of Himachal Pradesh applies to the petitioner. Under this policy, the cut off date for considering an employee for regularization of his services is 31.3.2010 on the completion of eight years continuous service with a minimum of 240 days in a calendar year subject to the availability of the post. Eight years of continuous service is only an eligibility criteria. The regularization shall be from prospective effect i.e. after the date of the issuance of orders of the regularization on completion of the codal formalities. The petitioner completed eight years of continuous service in the year 2009. His services have been rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 22.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 1999 to 2001 is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? ..OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No

Issue No.2 : Yes

Issue No.3 : Not pressed

Issue No.4 : No

Relief. : Claim petition dismissed vide operative portion of the Award.

## REASONS FOR FINDINGS

### ISSUE NO.1

8. The petitioner Shri Raj Kumar stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that the work for 240 days or more was provided to him by the respondent during the period of the alleged breaks. He also denied that he used to remain absent because of which he could not complete 240 days of work. Further, he denied that no fictional breaks were given to him by the respondent and he has instituted a phoney petition.

9. Conversely, Shri P.S. Rana, Executive Engineer, I&PH, Padhar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the absence of the petitioner was subsequently marked fraudulently in the muster rolls. Self stated, the petitioner admitted the contents of the muster rolls and received the payment. He denied that the petitioner and others were given the breaks depending upon the availability of the work and the budget. He also denied that the persons junior to the petitioner kept on serving the department continuously.

10. Ex. RW1/A is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/F.

11. Exts. RW1/B and C are the mandays charts pertaining to S/Sh. Anup Kumar and Om Prakash, respectively.

12. Ex. RW1/D is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. Vide this letter, all the Executive Engineers were directed to engage the labourers on full month basis as the Courts have not recognized the fictional breaks and have held such persons to be in continuous employment on daily wage basis.

13. Ex. RW1/E is the copy of the letter dated 7th May, 2010 issued by the Personnel Department, Govt. of Himachal Pradesh regarding regularization of daily waged/contingent paid workers.

14. Exts. P-1 to P-32 are the copies of the muster rolls which were issued by the respondent in the name of the petitioner and other workmen.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. From the mandays charts Exs. RW1/A and F, it can be gathered that the petitioner

was initially appointed on 06.1.1999. These mandays charts are not in dispute. Admittedly, the petitioner is still serving the respondent/department and his services have already been regularized.

16. Relying upon CWP No.5900/2010-F titled as Shyam Lal versus State of Himachal Pradesh through Secretary (PWD) to the Government of Himachal Pradesh, Shimla and others, decided on 18.12.2012 by our Hon'ble High Court, the ld. Authorized Representative and counsel for the petitioner argued that the work for 240 days in a year was not provided to their client by the respondent wrongly and illegally. The break period is required to be counted for the purpose of continuous service and their client is entitled to the regularization at an early date than the date on which his services have been regularized.

On the other hand, the ld. DDA urged that the work for 240 or more days in a year was provided to the petitioner by the respondent. The petitioner, who was an intermittent worker, used to remain willfully absent from his duties because of which he could not complete 240 days of work. No intentional/fictional break was provided to the petitioner at any point of time as alleged.

17. To my mind, the contention of the ld. DDA for the respondent holds the force and is sustainable for the reasons discussed hereinafter.

18. Section 25-B of the Act postulates as under:-

“25B. Definition of continuous service- For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
  - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
    - (ii) two hundred and forty days, in any other case;
  - (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) ninety-five days, in the case of a workman employed below ground in a mine; and
    - (ii) one hundred and twenty days, in any other case.

**Explanation.—**For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

- (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;
- (ii) he has been on leave with full wages, earned in the previous years;
- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks".

19. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duty bound to provide the work for 240 days in a period of 12 calendar months to the employee/petitioner. In *Digwadih Colliery v. Workmen*, AIR 1966 SC 75, it has been held that "service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted". The fiction of law converts service of 240 days in a period of 12 calendar months into continuous service for one complete year.

20. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

21. Now comes the all important question as to whether artificial breaks were provided by the respondent to the petitioner as alleged or not?

To my thinking, the answer to this query is in the negative. As already mentioned, the mandays charts Exs. RW1/A and F unfold that the services of the petitioner were initially engaged on 06.1.1999. From the date of his initial engagement to 31.12.2001, the petitioner was provided the work for more than 240 days in a calendar year by the respondent. However, he worked for less than 240 days and remained absent from his duties. Ex. RW1/A also highlights that the petitioner did not work for the days for which the muster rolls were issued in his name by the respondent. Sometimes he worked for less than 10 days despite the fact that the muster roll for the entire month was issued in his favour. He (petitioner) cannot be allowed to take advantage of his own wrongs. If the absence of the petitioner was wrongly marked or a line was wrongly drawn in the muster roll(s) showing that he (petitioner) has not reported for duty or the intentional breaks were given to him, then why he did not agitate the said fact earlier or at the time of the receipt of the payment for the working days put in by him and for which he was shown present? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. The break period in question relates to the years 1999 to 2001. The industrial dispute was raised by the petitioner after more than 10 years. The facts that the petitioner remained tight lipped and complacent about his rights for such a long period as well as received the payment(s) without any protest speak volumes about the truthfulness and veracity of his claim. The act and conduct of the petitioner is nocuous to his cause. Simply because no show cause notice was issued to the petitioner by the respondent for his willful absence from duty from time to time or no disciplinary proceedings were initiated against him by the respondent/employer, the same will not come to his (petitioner's) rescue taking into consideration the facts narrated above.

22. So far as Shyam Lal's case (cited supra) is concerned, there is nothing in the judgment of the Hon'ble High Court to show that the petitioner/workman Shri Shyam Lal was provided the

work for more than 240 days in a calendar year by the respondent/employer. The mandays chart produced in that case revealed that the petitioner was prevented from completing 240 days of work to deprive him the status and privileges of a work charge/regular employee. Further, in Shyam Lal's case there is nothing to establish that the payment for the actual working days was received by the workman without any protest. The same is not the situation in the present case. The catena of law laid down in Shyam Lal's case in no way helps the petitioner.

23. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner by the respondent. He is not entitled to any relief.

24. This issue is decided against the petitioner and in favour of his opponent.

#### ISSUE NO. 2

25. Taking into account my findings on issue No.1, it is held that the instant claim petition is not maintainable in the present form.

26. This issue is also decided against the petitioner.

#### ISSUE NO. 3

27. Not pressed

#### ISSUE NO. 4

28. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

29. This issue is decided in favour of the petitioner and against the respondent.

#### RELIEF (ISSUE NO. 5)

30. As a sequel to my findings on the various issues above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

31. The reference is answered in the aforesaid terms.

32. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

33. File after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of December, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 192/2012  
 Date of Institution : 03.3.2012  
 Date of Decision : 04.12.2013

Shri Mehar Singh s/o Shri Hari Singh, r/o Village Digli, P.O. Hara Bag, Tehsil Joginder Nagar, District Mandi, H.P. ....Petitioner.

*Versus*

The Executive Engineer, I.&P.H. Division, Padhar, Distt. Mandi, H.P.  
 ....Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
 : Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services/giving breaks in the services of Shri Mehar Singh S/O Shri Hari Singh, Village Digli, P.O. Hara Bag, Tehsil Joginder Nagar, District Mandi, H.P. from time to time during years 1998 & 1999 by the Executive Engineer, I.&P.H. Division Padhar, District Mandi, H.P. without complying with the provisions of Section 25-F, G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting non availability of work during certain periods, as per policy of the Government and availability of funds and indirectly admitting continuance employment of certain juniors, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the respondent w.e.f. 01.02.1998. He worked under the Assistant Engineer, I&PH Sub Division, Joginder Nagar. No appointment letter/order was issued in his

favour by the respondent at the time of the employment. His services used to be engaged for 15 to 20 days every month instead of the whole month by the respondent. The latter used to give him the fictional break for 10 to 15 days every month. Such breaks were given by the respondent up-to 31.12.1999. The breaks were given by the respondent so that he (petitioner) does not complete 240 days of work as required under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short) for the purpose of the regularization of his services as per the policy of the State Government. From the year 2000 onwards he has completed more than 240 days of work in each and every calendar year of his engagement till the date of the regularization of his services. After giving the intentional/artificial breaks to him, new/fresh hands were engaged by the respondent. The newly appointed persons namely S/Sh. Om Prakash Soni and Anoop Kumar were not given any break in service by the respondent. At the time of providing the fictional breaks to him (petitioner) from 21.04.1998 to 31.12.1999, the principle of 'last come first go' was not followed by the respondent. Work and funds were available with the respondent at the time of his disengagement from time to time. The fictional break period is required to be counted as continuous service for the regularization of his (petitioner's) services. The services of the persons junior to him have already been regularized by the respondent against the policy of the State. Per letter dated 27.3.2006, the Principal Secretary (IPH) to the Government of Himachal Pradesh directed all the Executive Engineers to provide the continuous work to all the daily waged workers without any break. If he (petitioner) would have been allowed to work without any break, he would have completed eight years of continuous service on 31.12.2005 and ten years of continuous service on 31.12.2006. In accordance with the policy of the State Government as framed/approved in Mool Raj Upadhyaya's case he is entitled to the regularization of his services as a work charged beldar w.e.f. 01.1.2007 in the pay scale of Rs.4910-10680/- with all other perks and allowances. Presently, he is working with the respondent/department as a beldar on work charge/regular basis. The respondent indulged in unfair labour practice. His act and conduct is/was also illegal and unjustified as well as violative of the provisions of Sections 25-F, 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon’ble Court kindly be set aside the illegal period of breaks from 21.04.1998 to 31.12.1999 and directed to respondent to pay the wages of applicant for breaks period and counted the said period in continuity of service for the purpose of his regularization.
- (ii) The Hon’ble Court kindly be again directed to respondent to grant the work-charge status to the applicant after completion of 10 years continuous service i.e. w.e.f. 01.01.2007 in the pay scale of Rs.4900-10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2007 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon’ble Court kindly be further directed to respondent to fix the applicant is beldar seniority list of work-charge/regular cadre above to junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant”.

4. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of Himachal Pradesh is a necessary party to the petition. It has not been joined as a party/respondent. The petition is bad for non-joinder of the necessary parties. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on 01.02.1998. However, it has been denied that the artificial/fictional breaks were provided to the petitioner from time to time as alleged. The petitioner was an intermittent worker. He used to work as per his convenience. Despite the paucity of funds, continuous work for the whole months or more than 240 days was provided to the petitioner. He used to absent from his duties. As and when the petitioner reported for duty, the muster roll was issued in his name. The services of the petitioner have already been regularized w.e.f. 09.3.2010. He is debarred from claiming parity with the workmen namely S/Sh. Om Prakash and Anoop Kumar, who were employed in the year 2002. The petitioner is claiming the benefit for the years 1998-1999. The services of S/Sh. Om Prakash and Anup Kumar were regularized after the regularization of the services of the petitioner. Shri Om Prakash stands superannuated. The directions issued by the department per letter dated 27.3.2006 are not applicable to the case of the petitioner since he used to willfully remain absent from his duties. The policy framed in Mool Raj Upadhyaya's case does not apply to the case of the petitioner. As per that policy one time benefit was given to the employees who had completed 10 years of service as on 31.12.1993 or the employees who had rendered one or more year of service, but had not completed 10 years of service as on 31.12.1993. The petitioner does not fulfill the criteria as laid down in Mool Raj Upadhyaya's case. The regularization policy dated 9th September, 2008 issued by the Government of Himachal Pradesh applies to the petitioner. Under this policy, the cut off date for considering an employee for regularization of his services is 31.3.2008 on the completion of eight years continuous service with a minimum of 240 days in a calendar year subject to the availability of the post. Eight years of continuous service is only an eligibility criteria. The regularization shall be from prospective effect i.e. after the date of the issuance of orders of the regularization on completion of the codal formalities. The petitioner completed eight years of continuous service in the year 2007. His services have been rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 22.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 1998 & 1999 is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? ..OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No

Issue No.2 : Yes

Issue No.3 : Not pressed

Issue No.4 : No

Relief. : Claim petition dismissed vide operative portion of the Award.

## REASONS FOR FINDINGS

### ISSUE NO.1

8. The petitioner Shri Mehar Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that the work for 240 days or more was provided to him by the respondent during the period of the alleged breaks. He also denied that he used to remain absent because of which he could not complete 240 days of work. Further, he denied that no fictional breaks were given to him by the respondent and he has instituted a phoney petition.

9. Conversely, Shri P.S. Rana, Executive Engineer, I&PH, Padhar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the absence of the petitioner was subsequently marked fraudulently in the muster rolls. Self stated, the petitioner admitted the contents of the muster rolls and received the payment. He denied that the petitioner and others were given the breaks depending upon the availability of the work and the budget. He also denied that the persons junior to the petitioner kept on serving the department continuously.

10. Ex. RW1/A is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/F.

11. Exts. RW1/B and C are the mandays charts pertaining to S/Sh. Anup Kumar and Om Prakash, respectively.

12. Ex. RW1/D is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. Vide this letter, all the Executive Engineers were directed to engage the labourers on full month basis as the Courts have not recognized the fictional breaks and have held such persons to be in continuous employment on daily wage basis.

13. Ex. RW1/E is the copy of the letter dated 9th September, 2008 issued by the Personnel Department, Govt. of Himachal Pradesh regarding regularization of daily waged workers.

14. Exts. P-1 to P-19 are the copies of the muster rolls which were issued by the respondent in the name of the petitioner and other workmen.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. From the mandays charts Exs. RW1/A and F, it can be gathered that the petitioner was initially appointed on 01.2.1998. These mandays charts are not in dispute. Admittedly, the petitioner is still serving the respondent/department and his services have already been regularized.

16. Relying upon CWP No.5900/2010-F titled as Shyam Lal versus State of Himachal Pradesh through Secretary (PWD) to the Government of Himachal Pradesh, Shimla and others,

decided on 18.12.2012 by our Hon'ble High Court, the ld. Authorized Representative and counsel for the petitioner argued that the work for 240 days in a year was not provided to their client by the respondent wrongly and illegally. The break period is required to be counted for the purpose of continuous service and their client is entitled to the regularization at an early date than the date on which his services have been regularized.

On the other hand, the ld. DDA urged that the work for 240 or more days in a year was provided to the petitioner by the respondent. The petitioner, who was an intermittent worker, used to remain willfully absent from his duties because of which he could not complete 240 days of work. No intentional/fictional break was provided to the petitioner at any point of time as alleged.

17. To my mind, the contention of the ld. DDA for the respondent holds the force and is sustainable for the reasons discussed hereinafter.

18. Section 25-B of the Act postulates as under:-

“25B. Definition of continuous service- For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
  - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
    - (ii) two hundred and forty days, in any other case;
  - (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) ninety-five days, in the case of a workman employed below ground in a mine; and
    - (ii) one hundred and twenty days, in any other case.

**Explanation.—**For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

- (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;
- (ii) he has been on leave with full wages, earned in the previous years;

- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks".

19. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duty bound to provide the work for 240 days in a period of 12 calendar months to the employee/petitioner. In *Digwadih Colliery v. Workmen*, AIR 1966 SC 75, it has been held that "service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted". The fiction of law converts service of 240 days in a period of 12 calendar months into continuous service for one complete year.

20. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

21. Now comes the all important question as to whether artificial breaks were provided by the respondent to the petitioner as alleged or not? To my thinking, the answer to this query is in the negative. As already mentioned, the mandays charts Exs. RW1/A and F unfold that the services of the petitioner were initially engaged on 01.2.1998. From the date of his initial engagement to 31.12.1999, the petitioner was provided the work for more than 240 days in a calendar year by the respondent. However, he worked for less than 240 days and remained absent from his duties. Ex. RW1/A also highlights that the petitioner did not work for the days for which the muster rolls were issued in his name by the respondent. Sometimes he worked for less than 10 days despite the fact that the muster roll for the entire month was issued in his favour. He (petitioner) cannot be allowed to take advantage of his own wrongs. If the absence of the petitioner was wrongly marked or a line was wrongly drawn in the muster roll(s) showing that he (petitioner) has not reported for duty or the intentional breaks were given to him, then why he did not agitate the said fact earlier or at the time of the receipt of the payment for the working days put in by him and for which he was shown present? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. The break period in question relates to the years 1998 & 1999. The industrial dispute was raised by the petitioner after more than 10 years. The facts that the petitioner remained tight lipped and complacent about his rights for such a long period as well as received the payment(s) without any protest speak volumes about the truthfulness and veracity of his claim. The act and conduct of the petitioner is nocuous to his cause. Simply because no show cause notice was issued to the petitioner by the respondent for his willful absence from duty from time to time or no disciplinary proceedings were initiated against him by the respondent/employer, the same will not come to his (petitioner's) rescue taking into consideration the facts narrated above.

22. So far as Shyam Lal's case (cited supra) is concerned, there is nothing in the judgment of the Hon'ble High Court to show that the petitioner/workman Shri Shyam Lal was provided the work for more than 240 days in a calendar year by the respondent/employer. The mandays chart produced in that case revealed that the petitioner was prevented from completing 240 days of work to deprive him the status and privileges of a work charge/regular employee. Further, in Shyam Lal's case there is nothing to establish that the payment for the actual working days was received by the workman without any protest. The same is not the situation in the present case. The catena of law laid down in Shyam Lal's case in no way helps the petitioner.

23. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner by the respondent. He is not entitled to any relief.

24. This issue is decided against the petitioner and in favour of his opponent.

#### ISSUE NO. 2

25. Taking into account my findings on issue No.1, it is held that the instant claim petition is not maintainable in the present form.

26. This issue is also decided against the petitioner.

#### ISSUE NO. 3

27. Not pressed

#### ISSUE NO. 4

28. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

29. This issue is decided in favour of the petitioner and against the respondent.

#### RELIEF (ISSUE NO. 5)

30. As a sequel to my findings on the various issues above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

31. The reference is answered in the aforesaid terms.

32. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

33. File after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of December, 2013

RAJAN GUPTA,  
Presiding Judge,  
*Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 190/2012

Date of Institution : 03.3.2012

Date of Decision : 04.12.2013

Shri Romi Chand s/o Shri Rikheshwar, r/o Village Yora, P.O. Dohag, Tehsil Joginder Nagar, District Mandi, H.P. ....Petitioner.

*Versus*

The Executive Engineer, I.&P.H. Division, Padhar, Distt. Mandi, H.P.

..Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services/giving breaks in the services of Shri Romi Chand S/O Shri Rikheshwar, Village Yora, P.O. Dohag, Tehsil Joginder Nagar, District Mandi, H.P. from time to time during the years 1998 to 2000 by the Executive Engineer, I.&P.H. Division Padhar, District Mandi, H.P. without complying with the provisions of Section 25-F, G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting non availability of work during certain periods, as per policy of the Government and availability of funds and indirectly admitting continuance employment of certain juniors, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the respondent w.e.f. 01.11.1998. He worked under the Assistant Engineer, I&PH, Sub Division, Joginder Nagar. No appointment letter/order was issued in his favour by the respondent at the time of the employment. His services used to be engaged for 15 to 20 days every month instead of the whole month by the respondent. The latter used to give him the fictional break for 10 to 15 days every month. Such breaks were given by the respondent up-to 31.12.2000. The breaks were given by the respondent so that he (petitioner) does not complete 240 days of work as required under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short) for the purpose of the regularization of his services as per the policy of the State Government. From the year 2001 onwards he has completed more than 240 days of work in each and every calendar year of his engagement till the date of the regularization of his services. After giving the intentional/artificial breaks to him, new/fresh hands were engaged by the respondent. The newly appointed persons namely S/Sh. Om Prakash Soni and Anoop Kumar were not given any break in service by the respondent. At the time of providing the fictional breaks to him (petitioner) from 01.12.1998 to 31.12.2000, the principle of ‘last come first go’ was not followed by the respondent. Work and funds were available with the respondent at the time of his

disengagement from time to time. The fictional break period is required to be counted as continuous service for the regularization of his (petitioner's) services. The services of the persons junior to him have already been regularized by the respondent against the policy of the State. Per letter dated 27.3.2006, the Principal Secretary (IPH) to the Government of Himachal Pradesh directed all the Executive Engineers to provide the continuous work to all the daily waged workers without any break. If he (petitioner) would have been allowed to work without any break, he would have completed eight years of continuous service on 31.12.2006 and ten years of continuous service on 31.12.2008. In accordance with the policy of the State Government as framed/approved in Mool Raj Upadhyaya's case he is entitled to the regularization of his services as a work charged beldar w.e.f. 01.1.2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. Presently, he is working with the respondent/department as a beldar on work charge/regular basis. The respondent indulged in unfair labour practice. His act and conduct is/was also illegal and unjustified as well as violative of the provisions of Sections 25-F, 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) The Hon’ble Court kindly be set aside the illegal period of breaks from 01.12.1998 to 31.12.2000 and directed to respondent to pay the wages of applicant for breaks period and counted the said period in continuity of service for the purpose of his regularization.
- (ii) The Hon’ble Court kindly be again directed to respondent to grant the work-charge status to the applicant after completion of 10 years continuous service i.e. w.e.f. 01.01.2009 in the pay scale of Rs.4900-10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2009 to onwards along with 12% interest from the amount due to till the date of realization the amount.
- (iii) The Hon’ble Court kindly be further directed to respondent to fix the applicant is beldar seniority list of work-charge/regular cadre above to junior.
- (xiv) Any other relief deemed fit may kindly be granted in the favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of Himachal Pradesh is a necessary party to the petition. It has not been joined as a party/respondent. The petition is bad for non-joinder of the necessary parties. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on 01.11.1998. However, it has been denied that the artificial/fictional breaks were provided to the petitioner from time to time as alleged. The petitioner was an intermittent worker. He used to work as per his convenience. Despite the paucity of funds, continuous work for the whole months or more than 240 days was provided to the petitioner. He used to absent from his duties. As and when the petitioner reported for duty, the muster roll was issued in his name. The services of the petitioner have already been regularized w.e.f. 07.10.2010. He is debarred from claiming parity with the workmen namely S/Sh. Om Prakash and Anoop Kumar, who were employed in the year 2002. The petitioner is claiming the benefit for the years 1998 to 2000. The services of S/Sh. Om Prakash and Anup Kumar were regularized after the regularization of the services of the petitioner. Shri Om Prakash stands superannuated. The directions issued by the department per letter dated 27.3.2006 are not applicable to the case of the petitioner since he used

to willfully remain absent from his duties. The policy framed in Mool Raj Upadhyaya's case does not apply to the case of the petitioner. As per that policy one time benefit was given to the employees who had completed 10 years of service as on 31.12.1993 or the employees who had rendered one or more year of service, but had not completed 10 years of service as on 31.12.1993. The petitioner does not fulfill the criteria as laid down in Mool Raj Upadhyaya's case. The regularization policy dated 8th September, 2010 issued by the Government of Himachal Pradesh applies to the petitioner. Under this policy, the cut off date for considering an employee for regularization of his services is 31.3.2009 on the completion of eight years continuous service with a minimum of 240 days in a calendar year subject to the availability of the post. Eight years of continuous service is only an eligibility criteria. The regularization shall be from prospective effect i.e. after the date of the issuance of orders of the regularization on completion of the codal formalities. The petitioner completed eight years of continuous service in the year 2009. His services have been rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 22.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 1998 to 2000 is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? ..OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No

Issue No.2 : Yes

Issue No.3 : Not pressed

Issue No.4 : No

Relief. : Claim petition dismissed vide operative portion of the Award.

## REASONS FOR FINDINGS

### ISSUE NO.1

8. The petitioner Shri Romi Chand stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that the work for 240 days or more was provided to him by the respondent during the period of the alleged breaks. He also denied that he used to remain absent because of which he could not complete 240 days of work. Further, he denied that no fictional breaks were given to him by the respondent and he has instituted a phoney petition.

9. Conversely, Shri P.S. Rana, Executive Engineer, I&PH, Padhar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the absence of the petitioner was subsequently marked fraudulently in the muster rolls. Self stated, the petitioner admitted the contents of the muster rolls and received the payment. He denied that the petitioner and others were given the breaks depending upon the availability of the work and the budget. He also denied that the persons junior to the petitioner kept on serving the department continuously.

10. Ex. RW1/A is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/F.

11. Exts. RW1/B and C are the mandays charts pertaining to S/Sh. Anup Kumar and Om Prakash, respectively.

12. Ex. RW1/D is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. Vide this letter, all the Executive Engineers were directed to engage the labourers on full month basis as the Courts have not recognized the fictional breaks and have held such persons to be in continuous employment on daily wage basis.

13. Ex. RW1/E is the copy of the letter dated 8th September, 2010 issued by the I&PH Department, Govt. of Himachal Pradesh regarding regularization of those daily waged/contingent paid workers, who have completed 8 years of continuous service as on 31.3.2009.

14. Exts. P-1 to P-24 are the copies of the muster rolls which were issued by the respondent in the name of the petitioner and other workmen.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. From the mandays charts Exs. RW1/A and F, it can be gathered that the petitioner was initially appointed on 01.11.1998. These mandays charts are not in dispute. Admittedly, the petitioner is still serving the respondent/department and his services have already been regularized.

16. Relying upon CWP No.5900/2010-F titled as Shyam Lal versus State of Himachal Pradesh through Secretary (PWD) to the Government of Himachal Pradesh, Shimla and others, decided on 18.12.2012 by our Hon'ble High Court, the ld. Authorized Representative and counsel for the petitioner argued that the work for 240 days in a year was not provided to their client by the respondent wrongly and illegally. The break period is required to be counted for the purpose of continuous service and their client is entitled to the regularization at an early date than the date on which his services have been regularized.

On the other hand, the ld. DDA urged that the work for 240 or more days in a year was provided to the petitioner by the respondent. The petitioner, who was an intermittent worker, used to remain willfully absent from his duties because of which he could not complete 240 days of work. No intentional/fictional break was provided to the petitioner at any point of time as alleged.

17. To my mind, the contention of the ld. DDA for the respondent holds the force and is sustainable for the reasons discussed hereinafter.

18. Section 25-B of the Act postulates as under:-

“25B. Definition of continuous service- For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
  - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
    - (ii) two hundred and forty days, in any other case;
  - (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) ninety-five days, in the case of a workman employed below ground in a mine; and
    - (ii) one hundred and twenty days, in any other case.

**Explanation.—**For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

- (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;
- (ii) he has been on leave with full wages, earned in the previous years;
- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

19. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duty bound to provide the work for 240 days in a period of 12 calendar months to the employee/petitioner. In *Digwadih Colliery v. Workmen*, AIR 1966 SC 75, it has been held that

“service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted”. The fiction of law converts service of 240 days in a period of 12 calendar months into continuous service for one complete year.

20. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

21. Now comes the all important question as to whether artificial breaks were provided by the respondent to the petitioner as alleged or not? To my thinking, the answer to this query is in the negative. As already mentioned, the mandays charts Exs. RW1/A and F unfold that the services of the petitioner were initially engaged on 01.11.1998. From the month of the initial appointment to 31.12.2000, the petitioner was provided the work for more than 240 days in a calendar year by the respondent. However, he worked for less than 240 days and remained absent from his duties. Ex. RW1/A also highlights that the petitioner did not work for the days for which the muster rolls were issued in his name by the respondent. Sometimes he worked for less than 10 days despite the fact that the muster roll for the entire month was issued in his favour. He (petitioner) cannot be allowed to take advantage of his own wrongs. If the absence of the petitioner was wrongly marked or a line was wrongly drawn in the muster roll(s) showing that he (petitioner) has not reported for duty or the intentional breaks were given to him then why he did not agitate the said fact earlier or at the time of the receipt of the payment for the working days put in by him and for which he was shown present? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. The break period in question relates to the years 1998 to 2000. The industrial dispute was raised by the petitioner after more than 10 years. The facts that the petitioner remained tight lipped and complacent about his rights for such a long period as well as received the payment(s) without any protest speak volumes about the truthfulness and veracity of his claim. The act and conduct of the petitioner is nocuous to his cause. Simply because no show cause notice was issued to the petitioner by the respondent for his willful absence from duty from time to time or no disciplinary proceedings were initiated against him by the respondent/employer, the same will not come to his (petitioner's) rescue taking into consideration the facts narrated above.

22. So far as Shyam Lal's case (cited supra) is concerned, there is nothing in the judgment of the Hon'ble High Court to show that the petitioner/workman Shri Shyam Lal was provided the work for more than 240 days in a calendar year by the respondent/employer. The mandays chart produced in that case revealed that the petitioner was prevented from completing 240 days of work to deprive him the status and privileges of a work charge/regular employee. Further, in Shyam Lal's case there is nothing to establish that the payment for the actual working days was received by the workman without any protest. The same is not the situation in the present case. The catena of law laid down in Shyam Lal's case in no way helps the petitioner.

23. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner by the respondent. He is not entitled to any relief.

24. This issue is decided against the petitioner and in favour of his opponent.

#### ISSUE NO. 2

25. Taking into account my findings on issue No.1, it is held that the instant claim petition is not maintainable in the present form.

26. This issue is also decided against the petitioner.

#### ISSUE NO. 3

27. Not pressed

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ISSUE NO. 4

28. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

29. This issue is decided in favour of the petitioner and against the respondent.

#### RELIEF (ISSUE NO. 5)

30. As a sequel to my findings on the various issues above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

31. The reference is answered in the aforesaid terms.

32. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

33. File after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of December, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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#### IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 263/2012  
Date of Institution : 29.06.2012  
Date of Decision : 06.12.2013

Shri Madan Lal s/o Shri Bhagat Ram, r/o Village Nain, P.O. Luharwin, Tehsil Ghumarwin, District Bilaspur, H.P. (now dead, through his LR/wife Smt. Urmila Devi) ..Petitioner.

*Versus*

The Executive Engineer, H.P.P.W.D. Division Ghumarwin, District Bilaspur, H.P.

*..Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. Soham Kaushal, ADA

### AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of the services of Shri Madan Lal S/O Shri Bhagat Ram, R/O Village Nain, P.O. Luharwin, Tehsil Ghumarwin, District Bilaspur, H.P. by the Executive Engineer, H.P.P.W.D. Division, Ghumarwin, District Bilaspur, H.P. w.e.f. October, 1998 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, past service benefits, seniority and amount of compensation the above worker is entitled to from the above employer?”

2. At the very outset, I will like to highlight that the petitioner/workman Shri Madan Lal expired during the pendency of the proceedings on 09.8.2012 because of which his legal heir/wife Smt. Urmila Devi was brought on the record.

3. The case of the petitioner Smt. Urmila Devi (as set out in the statement of claim/demand) is that the services of her husband (late Sh. Madan Lal) were engaged as a daily waged beldar by the respondent in the month of July, 1997. He continuously worked as such up-to the month of October, 1998. In the year 1997, Shri Madan Lal worked for 108 days whereas in the year 1998, he served for 160 days. In October, 1998, the services of the deceased workman (Shri Madan Lal) were terminated by the respondent without assigning any reason which amounts to unfair labour practice. Before the disengagement of his services, neither any notice was given to him nor the wages in lieu of the notice period and the retrenchment compensation were paid. Late Shri Madan Lal preferred Original Application No.1062/1999 before the erstwhile Hon'ble Administrative Tribunal for the redressal of his grievances. Such Original Application was dismissed by the Hon'ble Administrative Tribunal on 25.10.2004 on the ground that it has no jurisdiction to deal with the same. Thereafter, a demand notice dated 19.5.2005 was served upon the respondent by Shri Madan Lal (deceased workman). In the seniority list the names of 572 daily wagers have been mentioned. The name of her (petitioner's) husband Shri Madan Lal does not figure in the seniority list. 96 persons junior to the deceased workman are still serving the respondent/department. Besides them S/Shri Nika Ram and Pyare Lal etc. are junior to late Shri Madan Lal. At the time of the termination of the services of late Shri Madan Lal, the principle of 'last come first go' was not followed by the respondent. Work of permanent nature is available with the respondent/department. The juniors have been engaged/re-engaged by ignoring the seniors. At the time of re-appointing the juniors, an opportunity of reemployment was not afforded to the deceased workman. From the date of his unlawful termination till the date of death, the deceased workman was unemployed. The act and conduct of the respondent is illegal and unjustified. It is also violative of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, she (petitioner) prays that the termination of the services of her husband (late Shri Madan Lal) ordered by the respondent in the month of October, 1998 be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc. All the service benefits relating to the deceased workman should be granted to her (petitioner Urmila Devi).

4. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the deceased workman has been infringed. The deceased workman has no cause of action. The petition is bad on account of delay and laches on the part of the deceased workman. The claim petition/reference is bad for non-joinder of the necessary parties viz. Deputy Commissioner, Bilaspur, who is/was the Incharge of the DRDA (District Rural Development Agency). The deceased workman has misrepresented himself. He has concealed the material facts from the Court.

On merits, it has been owned that the services of the deceased workman (Shri Madan Lal) were engaged as a daily waged beldar in the month of July, 1997. However, it has been pleaded that in the year 1997 under the 8th Five Year Plan, a centrally sponsored scheme known as Employment Assurance Scheme ('EAS' in short) was implemented in Ghumarwin development block of Bilaspur District. As per the scope of the scheme, it was to operate in the rural areas of 1752 blocks and 257 districts situated in drought prone area, desert area, tribal area and hill area of the country. Under the EAS, assured employment of 100 days was to be provided during the lean agriculture season to the rural poor who were in need of the employment and seeking the same. The implementing authority of the scheme i.e. Deputy Commissioner, Bilaspur, as per Chapter 3 of the scheme, released the funds per letter dated 17.3.1997 in his (respondent's) favour. He (respondent) was one of the implementing agencies under the EAS. With the release of the funds by the implementing authority to him (respondent), he provided assured employment to as many as 573 rural masses of Ghumarwin development block in a phased manner being the implementing agency. The services of those persons were engaged under the EAS who sought employment assistance under the scheme. The deceased workman was also employed under the scheme. His name figures at serial No.573 of the list of the workmen whose services were engaged under the EAS. On account of non availability of the budget, the services of the workmen (including the deceased workman), who were employed under EAS, could not be continued beyond October, 1998. Since the engagement of the deceased workman was under a specific scheme, the discontinuation of his services for want of sanction/funds by the implementing authority or closure of the scheme does not amount to unfair labour practice. Of late, the Government of India has again introduced a similar rural employment guarantee scheme under the name and style of MNREGA for rural/poor masses of the whole country. No intentional breaks in service were provided to the deceased workman at any point of time. He (deceased workman) did not complete 240 days of continuous service as claimed. The instant industrial dispute has been raised by the deceased workman at a belated stage. The services of some of the workmen have been re-engaged as per the orders passed by the Hon'ble Administrative Tribunal. The deceased workman cannot claim parity with the workmen who completed 240 days of work as per Section 25-B of the Act. He (deceased workman) is also debarred from claiming parity with the labourers whose services were engaged by him (respondent) for normal functioning, operation and routine development activities carried out under the plan and non plan expenditure of the State of Himachal Pradesh. No provision of the Act has been flouted. The services of the deceased workman could not be continued for want of the release of funds under the EAS by the implementing authority (Deputy Commissioner). The deceased workman was gainfully employed as an agriculturist. He (deceased workman) is not entitled to any relief. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

5. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been maintained that Shri Madan Lal had nothing to do with the DRDA. His services were not engaged in any scheme/project. Shri Madan Lal (deceased) was employed by the respondent for the laying/repair of the road(s).

6. Per order dated 25.02.2013, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent during the month of October, 1998 is illegal and unjustified as alleged? ..OPP.
2. Whether the petitioner has a cause of action? ..OPP.
3. Whether the claim petition is not maintainable in the present form? ..OPR.
4. Whether the claim petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR.
5. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
6. Whether the petitioner has concealed the true and material facts from the Court as alleged. If so, its effect? ..OPR.

Relief.

7. I have heard the ld. counsel/AR for the parties and have gone through the case file.

8. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Not pressed

Issue No.4 : No

Issue No.5 : Not pressed

Issue No.6 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

## REASONS FOR FINDINGS

### ISSUE NO.1

9. Petitioner Smt. Urmila Devi, who is wife of the deceased workman stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she admitted that her husband served the respondent from July, 1997 to October, 1998. Self stated, his (Madan Lal's) name was subsequently incorporated in the seniority list. She denied that the services of her deceased husband were engaged in a scheme. She does not know that the scheme came to an end in the year 1999 because of which the services of all the persons engaged under the scheme were terminated. She is not aware of the fact that Shri Nikka

Ram etc. were re-employed as per the orders passed by the Court. She denied that late Shri Madan Lal was not entitled to the re-engagement of his services due to the closure of the scheme.

10. Conversely, Shri Prakash Chand, Executive Engineer, HPPWD Division, Ghumarwin (respondent) testified as RW1. In his affidavit Ex. RW1/A filed in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that S/Shri Nikka Ram and Lekh Ram etc. are/were junior to the deceased. Due to oversight, the name of late Shri Madan Lal could not be entered in the seniority list. He denied that the services of the deceased workman were disengaged unlawfully. Out of 573 persons employed in the scheme, 28 labourers have been re-employed as per the orders of the Court. The services of the persons junior to the deceased workman have also been re-engaged.

11. Ex. PW1/B is the seniority list of daily waged workers engaged under the Employment Generation Scheme. It corresponds to Ex. PA. The name of late Shri Madan Lal figures at serial No.573 of Ex. PW1/B.

12. Ex. PW1/C is the copy of the death certificate of Shri Madan Lal. It depicts that he left the land of the dying on 09.8.2012.

13. Ex. PW1/D is the copy of the parivar register of deceased workman.

14. Ex. RW1/B is the copy of the outlines and objectives of the Employment Assurance Scheme.

15. Ex. RW1/C is the copy of the office order dated 17.3.1997 issued by Deputy Commissioner, Bilaspur. It reveals that the funds were allocated by the Deputy Commissioner (implementing authority) in favour of the respondent for the implementation of the scheme.

16. Ex. RW1/D is the mandays chart relating Shri Madan Lal (deceased workman).

17. Exts. RW1/E to I are the mandays charts pertaining to S/Sh. Nikka Ram, Lekh Ram, Anil Kumar, Pyare Lal and Chaman Lal, respectively. All these persons were also engaged by the respondent under EAS.

18. Ex. RW1/J is the copy of the order/judgment dated 05.1.1999 passed by the Hon'ble Administrative Tribunal in O.A. No. 1919/1998 titled as Shri Nikka Ram versus State of Himachal Pradesh through Secretary, (Public Works Department) & another.

19. Ex. RW1/K is the copy of the order/judgment dated 22.4.1999 pronounced by the Hon'ble Administrative Tribunal in O.A. No. 718/1999 titled as Shri Lekh Ram versus State of H.P. through Secretary, (PWD), Government of Himachal Pradesh & another.

20. Ex. RW1/L is the copy of the order dated September 6, 1999 passed by the Hon'ble Administrative Tribunal in O.A. No.721/1999 titled as Anil Kumar versus State of Himachal Pradesh through Secretary (Public Works Department) to the Government of Himachal Pradesh, Shimla and another.

21. Ex. RW1/M is the copy of the order dated 23.4.1999 passed by the Hon'ble Administrative Tribunal in O.A. No. 607/1999 titled as Sh. Pyare Lal versus The State of Himachal Pradesh, through Secretary (PWD) to the Govt. of Himachal Pradesh and another.

22. Ex. RW1/N is the copy of the order/judgment dated April 22, 1999 passed by the Hon'ble Administrative Tribunal in O.A. No.722/1999 titled as Shri Chaman Lal versus State of Himachal Pradesh through Secretary (PWD) to the Govt. of Himachal Pradesh and another.

23. Ex. RW1/O is the seniority list of daily waged/regular workers who were employed under EAS and whose services have been re-engaged by the respondent as per the orders of this Court and the Hon'ble Administrative Tribunal.

24. Exts. RW1/P1 to P9 are the copies of the muster rolls which were issued in the name of the deceased workman (Shri Madan Lal) and others by the respondent.

25. It is the admitted case of the parties that the services of the deceased were engaged as a daily waged beldar by the respondent in the month of July, 1997 and he worked as such up-to the month of October, 1998. In the reply, the respondent has no where pleaded that the workman was put to notice that his employment is/was in a project (EAS) and the period of engagement is/was coterminous with the project. The respondent (RW1) also did not utter a single word to the effect that at the time of the appointment of the deceased workman, he was duly informed that his services have been engaged in a project/scheme and the same will come to an end on the closure of the project/scheme. It is the admitted case of the respondent that the services of the workman (late Shri Madan Lal) were disengaged in the month of October, 1998 because the funds under the EAS were not released by the implementing authority viz. Deputy Commissioner, Bilaspur.

26. Ex. RW1/D i.e. the mandays chart pertaining to late Shri Madan Lal unfolds that he did not complete 240 days of work in a block of 12 calendar months preceding the date/month of his termination as envisaged under Section 25-B of the Act. The provisions of Section 25-F of the Act are thus not attracted in this case.

27. From the seniority list Ex. PW1/B (corresponding to Ex. PA), it can be gathered that at the time of the disengagement of the services of the deceased workman, the persons junior to him were retained in service by the respondent. Some of the juniors even worked in the year 1999. This shows that the respondent failed to adhere to the principle of 'last come first go'. Not only this, the respondent has placed on the file the seniority list (Ex. RW1/O) of the daily waged/regular workers whose services were engaged under EAS, and have been re-engaged as per the orders of the Court. The said list clarifies that the services of the persons junior to the deceased workman namely Shri Basu Dev etc. have already been re-engaged by the respondent. RW1 admitted that the persons junior to the deceased workman are serving under him. When the services of the persons junior to late Shri Madan Lal were re-engaged, an opportunity of reemployment was not afforded to him (Shri Madan Lal). This clearly shows that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. For the said reasons, the termination of the services of the deceased workman is illegal and unjustified. Needless to say that for deriving the benefit under Sections 25-G and 25-H of the Act, a workman need not complete 240 days of work in a block of 12 calendar months anterior to the date/month of his termination.

28. This issue is decided in favour of the petitioner and against the respondent.

#### ISSUE NO. 2

29. Keeping in mind my findings on issue No.1 above, it is held that the petitioner has a cause of action.

30. This issue is also decided in favour of the petitioner and against the respondent.

#### ISSUES NO. 3, 5 AND 6

31. Not pressed.

## ISSUE NO. 4

32. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

33. In Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota versus Mohan Lal, Civil Appeal No. 6795 of 2013, decided on 16th August, 2013, by the Hon’ble Supreme Court of India, the issue regarding delay in raising the industrial dispute by the workman was discussed. Paras 19 and 20 of the judgment read thus:-

- “19. In a subsequent decision in Balbir Singh, this Court observed that Ajaib Singh was confined to the facts and circumstances of that case. It is true that in Balbir Singh, the plea of delay was raised before the Industrial Tribunal but we would emphasize the passage from Balbir Singh where it was said: “Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially.”
- 20. We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the I.D. Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed.”

34. In Mohan Lal’s case (cited supra), the workman/petitioner worked as a work-charged employee for 286 days. The industrial dispute was raised by him after six years of the termination. The Hon’ble Apex Court opined that the interest of justice will be sub-served if in lieu of reinstatement, the compensation of Rs.1,00,000/- (one lac) is paid to the workman by the employer. 35. Now comes the question as to what relief should be granted to Smt. Urmila Devi the wife/legal representative of the deceased workman (Shri Madan Lal)?

To my thinking, the deceased workman is/was entitled to the reinstatement of his services keeping in view all the relevant factors including the mode and manner of his appointment, nature of the employment and the length of service etc., more so, when the persons junior to him have already been reinstated in service by the respondent in obedience to the orders passed by this Court and the Hon'ble Administrative Tribunal. Since the workman has already died, I refrain from passing the order of reinstatement in favour of his wife. There is no cogent and convincing evidence on the record to show that during the period of his forced idleness, late Shri Madan Lal was not gainfully employed. He is thus not entitled to the back wages. The termination of the services of the deceased workman has been held to be bad in the eyes of law by this Court under Sections 25-G and 25-H of the Act. The industrial dispute was raised by the deceased immediately after his termination by instituting O.A. No.1062/1999 before the Hon'ble Administrative Tribunal.

36. Smt. Urmila Devi is required to be suitably compensated due to the unlawful termination of the services of her deceased husband by the respondent.

37. This issue too is decided in favour of the petitioner.

#### RELIEF (ISSUE NO. 7)

38. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The termination of the services of the deceased workman by the respondent in the month of October, 1998 is set aside and quashed. The respondent is directed to pay a lump sum amount of Rs.30,000/- (thirty thousand only) as compensation to the legal heirs of the deceased workman Shri Madan Lal in lieu of the reinstatement and other consequential benefits. Such amount will be shared by the legal heirs of the deceased equally. The compensation money will be paid by the respondent to the heirs of the deceased workman or deposited in this Court within a period of 60 days from today failing which he (respondent) will be liable to pay interest @ 9% per annum on the said amount from the date of the institution of the reference i.e. 29.6.2012 till the date of payment/deposit. The respondent is also directed to consider the case of one of the legal representatives of the deceased workman for employment on compassionate grounds. Parties to bear their own costs.

39. The reference is answered in the aforesaid terms.

40. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

41. File after due completion be consigned to the Record Room.

Announced in the open Court today this 6th day of December, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 48/2013  
Date of Institution : 25.04.2013  
Date of Decision : 06.12.2013

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Miss Shakuntla Devi d/o Shri Sher Singh, r/o VPO Baloh, Tehsil Bhoranj, Distt. Hamirpur,  
H.P. ..Petitioner.

*Versus*

12. The Superintending Engineer, HPPWD Circle, Hamirpur, H.P.
13. The Executive Engineer, HPPWD Division Touni Devi, Distt. Hamirpur, H.P.  
..Respondents.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Umesh Nath Dhiman, Adv.

For the Respondents : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Miss Shakuntla Devi D/O Sh. Sher Singh, VPO Baloh, Tehsil Bhoranj, Distt. Hamirpur, H.P. by i) The Superintending Engineer, HPPWD Circle, Hamirpur, H.P. ii) The Executive Engineer, HPPWD Division Touni Devi, Distt. Hamirpur, H.P. during November, 1999 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily waged beldar by the respondents in HPPWD Sub Division, Lambloo, in the month of February, 1998. She worked as such up-to the month of November, 1999 as well as completed 240 days of work in each and every calendar year of her employment. In the month of November, 1999, her services were terminated by the respondents without assigning any reason. She was not given an opportunity of being heard. Before the disengagement of her services, neither any notice was given to her nor the wages in lieu of the notice period and the retrenchment compensation were paid. At the time of her termination, the persons junior to her namely Shri Prithi Chand etc. were retained in service by the respondents. The latters failed to abide by the principle of ‘last come first go’. Not only this, after the disengagement of her services new/fresh hands namely Smt. Anu Bala etc. have been appointed by the respondents. She was not given an opportunity of re-employment. If her services would not have been disengaged unlawfully, she would have become entitled to the regularization of her services as per the trite laid down by the Hon’ble Apex Court in Mool Raj Upadhayay’s case, particularly when the services of the persons junior to her have already been regularized. The act and conduct of the respondent is illegal and unjustified. It is also violative of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

“the disengagement/termination/retrenchment of the petitioner w.e.f. Nov. 1999, may kindly be quashed and set aside and the respondents may be directed to reinstate the petitioner in service with past seniority and back wages and also the benefit of work charged

status/regularisation on the basis of the aforesaid seniority over & above the juniors/fresh persons in the pay scale of Rs.2620-4140 with all consequential benefits, in the interests of justice”.

3. On notice, the respondents appeared. They filed joint reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable. The petitioner has no cause of action. The petition is bad on account of delay and laches on the part of the claimant/petitioner.

On merits, it has been denied that the services of the petitioner were engaged as a daily waged beldar in the month of February, 1998. As per the record the petitioner was initially appointed in the month of July, 1998. She worked up-to the month of November, 1999. Thereafter, the petitioner left the job voluntarily and did not report for duty. Since the petitioner willingly left the service, the question of retaining the persons junior to her or engaging new/fresh hands does not arise. She (petitioner) is not entitled to any protection under the Act and cannot claim parity with the workmen who worked in continuity. S/Shri Prithi Chand and Santosh Kumar are senior to the petitioner. She is not entitled to the regularization of her services as per the policy framed/approved in Mool Raj Upadhayay’s case as she was employed after 31.12.1993. The instant industrial dispute has been raised by the petitioner at a belated stage vide demand notice dated 26.9.2011. The petitioner is gainfully employed as an agriculturist. No provision of the Act has been flouted. The petitioner is not entitled to any relief. The petition is meritless.

In these circumstances, the respondents pray that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents. It has been denied that she abandoned the job. The services of the persons junior to her namely S/Shri Raj Kumar and Rakesh Kumar etc. have already been regularized by the respondents/department. The freshers appointed by the respondents namely Anu Bala etc. are still on the rolls of the department.

5. Per order dated 18.09.2013, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondents in the month of November, 1999, is/was illegal and unjustified as alleged? ..OPP.
2. Whether the petitioner has a cause of action? ..OPP.
3. Whether the petition is not maintainable in the present form? ..OPR.
4. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Not pressed

Issue No.4 : No

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Relief. : Claim petition allowed in part vide operative portion of the Award.

## REASONS FOR FINDINGS

### ISSUE NO. 1

8. Kumari Shakuntla Devi (petitioner) stepped into the dock as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she stated that earlier she had worked in the Electricity Board for 2-3 months. She does not remember that she had joined the service in the office of the respondents in the month of July, 1998. She denied that she willingly left the job and has instituted a phoney petition to gain the employment and other undue benefits.

9. Conversely, Shri Ramesh Kumar Sharma, Executive Engineer, HPPWD Division, Tauni Devi (respondent No.2) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the services of the petitioner were engaged in the month of February, 1998. When the petitioner left the job, no notice was given to her asking her to resume the duties. Even no departmental proceedings were initiated against the petitioner. He admitted that the persons junior to the petitioner are working under them. He also admitted that after the year 1999, new/fresh hands were engaged. When new/fresh hands were appointed, a notice for re-employment was not given to the petitioner. He denied that the services of the petitioner were disengaged in a wrongful manner.

10. Ex. RW1/B is the mandays chart relating to the petitioner.

11. Exs. RW1/C to F are the mandays charts pertaining to S/Shri Santosh Kumar, Prithi Chand, Rakesh Kumar and Kumari Arun Bala, respectively.

12. Ex. RW1/G is the seniority list/year-wise working days of daily waged workers in respect of HPPWD Division Tauni Devi. In all the names of 442 workers are entered in this list. The name of the petitioner figures at serial No.106.

13. Ex. RW1/H is the copy of the demand notice served upon the respondents by the petitioner under Section 2-A of the Act.

14. Ex. RW1/I is the detail of working days relating to the petitioner. She served from the year 1990 to the year 1993 under Senior Executive Engineer, Electrical Division, HPSEB, Hamirpur.

15. Ex. RW1/J is the copy of a letter dated 19.1.2009 written by the Senior Executive Engineer, HPSEB, Hamirpur to the petitioner. Vide this letter the information sought by the applicant/petitioner under the Right to Information Act i.e. detail of the working days (Ex. RW1/I) was supplied to her.

16. Ex. RW1/K is the copy of a letter dated 14.10.2013 written by the Senior Executive Engineer, HPSEB Ltd., Hamirpur to the respondent No. 2. As per this letter the information required by the respondent No.2 was provided to him by the HPSEB.

17. Ex. RW1/L is the copy of the Jamabandi. It depicts that the petitioner is owner in possession of the land in Tehsil Bhoranj, District Hamirpur.

18. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar/labourer by the respondents. The petitioner has pleaded that her services were engaged by the respondents on 01.2.1998. The respondents have maintained that the petitioner was initially appointed in the month of July, 1998. The petitioner has not placed/exhibited on the file any document evidencing that she was employed by the respondents on 1st February, 1998 as claimed. It is not the case of the petitioner that the mandays chart Ex. RW1/B produced by the respondents is wrong. Its perusal discloses that the petitioner served the respondents from July, 1998 to November, 1999 intermittently. In the month of November, 1999, the petitioner served the respondents for 30 days.

19. The contention of the petitioner is that during the month of November, 1999, her services were wrongly and illegally terminated by the respondents without assigning any reason. While denying the said fact the respondents have pleaded that after November, 1999, the petitioner abandoned the job of her own accord and free volition.

20. It is well known that the abandonment has to be proved like any other fact by the respondents/employers. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. It has come in the statement of the respondent No.2 (RW1) that after the petitioner allegedly left the service, no notice was given to her calling upon her to resume the duties. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondents for her alleged willful absence from duty. The plea of abandonment put forth by the respondents is not established.

21. The mandays chart Ex. RW1/B reveals that the petitioner had completed more than 240 days of work in a block of 12 calendar months anterior to the date/month of her termination i.e. November, 1999.

22. Section 25-F of the Act postulates as under:-

**“25-F. Conditions precedent to retrenchment of workmen—**No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

23. There is nothing on the record to show that the provisions of the above quoted Section were complied with by the respondents before the disengagement of the services of the petitioner.

24. Shri Ramesh Kumar Sharma (RW1) in his cross-examination admitted that the persons junior to the petitioner are still working under them (respondents). He (RW1) also admitted that after the year 1999, new/fresh hands were engaged. These facts find support from the seniority list Ex. RW1/G coupled with the mandays charts Exts. RW1/E and F relating to Shri Rakesh Kumar

and Kumari Arun Bala. Ex. RW1/E clarifies that Shri Rakesh Kumar was appointed in the month of September, 1998. He is junior to the petitioner, whose services were engaged in the month of July, 1998. The services of Shri Rakesh Kumar were not terminated by the respondents along-with the petitioner. Retaining the junior at the cost of the senior is nothing but unfair labour practice. Ex. RW1/F goes to show that Kumari Arun Bala was appointed by the respondents on 24.7.2000 i.e. after the retrenchment of the services of the petitioner. RW1 admitted that at the time of the engagement of the new/fresh hands, an opportunity of reemployment was not afforded to the petitioner.

25. Such being the situation, I have no hesitation to conclude that the respondents have contravened the provisions of Sections 25-F, 25-G and 25-H of the Act. The termination of the services of the petitioner by the respondents is illegal and unjustified.

26. This issue is decided in favour of the petitioner and against the respondents.

#### ISSUE NO. 2

27. Keeping in mind my findings on issue No.1 above, it is held that the petitioner has a cause of action.

28. This issue is also decided in her favour.

#### ISSUE NO.3

29. Not pressed.

#### ISSUE NO. 4

30. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

31. In Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota versus Mohan Lal, Civil Appeal No. 6795 of 2013, decided on 16th August, 2013, by the Hon’ble Supreme Court of India, the issue regarding delay in raising the industrial dispute by the workman was discussed. Paras 19 and 20 of the judgment read thus:-

“19. In a subsequent decision in Balbir Singh, this Court observed that Ajaib Singh was confined to the facts and circumstances of that case. It is true that in Balbir Singh, the plea of

delay was raised before the Industrial Tribunal but we would emphasize the passage from Balbir Singh where it was said: "Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially.

20. We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the I.D. Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed."

32. In Mohan Lal's case (cited supra), the workman/petitioner worked as a work-charged employee for 286 days. The industrial dispute was raised by him after six years of the termination. The Hon'ble Apex Court opined that the interest of justice will be sub-served if in lieu of reinstatement, the compensation of Rs.1,00,000/- (one lac) is paid to the workman by the employer.

33. Now comes the all important question as to what relief should be granted/awarded to the petitioner? The record shows that the petitioner served the respondents intermittently from July, 1998 to November, 1999. She worked for 384 days in all under the respondents. Browsing of the reference/notification dated 30th March, 2013, issued by the appropriate Govt.viz. Labour Commissioner, Himachal Pradesh, goes to show that after the disengagement of her services, the petitioner had submitted the representations/applications before the respondents for the reinstatement of her services. As many as seven applications/representations were submitted by the petitioner before the respondents in different years for re-employment. The first application/representation was made by her on 07.5.2000, whereas, the last one was submitted by her on 11.2.2010. The dispute was kept alive by the petitioner from the very beginning. When the representations/applications submitted by the petitioner did not yield any result, the demand notice dated 26.9.2011, the copy of which is Ex. RW1/H, was served upon the respondents by the petitioner. Conciliation proceedings were initiated by the Labour Officer-cum-Conciliation Officer, Bilaspur, but of no avail.

34. At the cost of reiteration, I will like to add that the termination of the services of the petitioner has been held to be bad in the eyes of law by this Court as the respondents contravened the provisions of Sections 25-F, 25-G and 25-H of the Act. To my thinking the petitioner is entitled to the reinstatement of her services keeping in view all the relevant factors including the mode and manner of her appointment, nature of the employment and the length of service etc., more so, when she kept the dispute alive from its inception. While testifying in the Court as PW1, the petitioner has given her age as 44 years. It is common knowledge that a young lady like the petitioner will not sit at home during the period she is/was out of the job. The petitioner has failed to discharge the initial Thus that during the period of her forced idleness, she is/was not gainfully employed. She is thus not entitled to the back wages.

35. This issue too is decided in favour of the petitioner and against the respondents.

#### RELIEF (ISSUE NO. 5)

36. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The termination of the services of the petitioner by the

respondents is set aside and quashed. The respondents are directed to reinstate the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date/month of her illegal termination i.e. November, 1999 except back wages. The respondents are also directed to consider the case of the petitioner for regularization of her services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, she (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of her junior(s). Parties to bear their own costs.

37. The reference is answered in the aforesaid terms.

38. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

39. File after due completion be consigned to the Record Room.

Announced in the open Court today this 6th day of December, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 194/2012  
Date of Institution : 02.3.2012  
Date of Decision : 04.12.2013

Shri Shamsher Singh s/o Shri Som Dev, r/o Village Masoli, P.O. Jalpehar, Tehsil Joginder Nagar, District Mandi, H.P. ....Petitioner.

*Versus*

The Executive Engineer, I.&P.H. Division, Padhar, Distt. Mandi, H.P.

..Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services/giving breaks in the services of Sh. Shamsher Singh S/O Shri Som Dev, Village Masoli, P.O. Jalpehar, Tehsil Joginder Nagar, District Mandi,

H.P. from time to time during the years 2000 & 2001 by the Executive Engineer, I.&P.H. Division Padhar, District Mandi, H.P. without complying with the provisions of Section 25-F, G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting non availability of work during certain periods, as per policy of the Government and availability of funds and indirectly admitting continuance employment of certain juniors, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the respondent w.e.f. 01.06.2000. He worked under the Assistant Engineer, I&PH, Sub Division, Joginder Nagar. No appointment letter/order was issued in his favour by the respondent at the time of the employment. His services used to be engaged for 15 to 20 days every month instead of the whole month by the respondent. The latter used to give him the fictional break for 10 to 15 days every month. Such breaks were given by the respondent up-to 31.12.2001. The breaks were given by the respondent so that he (petitioner) does not complete 240 days of work as required under Section 25-B of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short) for the purpose of the regularization of his services as per the policy of the State Government. From the year 2002 onwards he has completed more than 240 days of work in each and every calendar year of his engagement till the date of the regularization of his services. After giving the intentional/artificial breaks to him, new/fresh hands were engaged by the respondent. The newly appointed persons namely S/Sh. Om Prakash Soni and Anoop Kumar were not given any break in service by the respondent. At the time of providing the fictional breaks to him (petitioner) from 21.01.2000 to 31.12.2001, the principle of 'last come first go' was not followed by the respondent. Work and funds were available with the respondent at the time of his disengagement from time to time. The fictional break period is required to be counted as continuous service for the regularization of his (petitioner's) services. The services of the persons junior to him have already been regularized by the respondent against the policy of the State. Per letter dated 27.3.2006, the Principal Secretary (IPH) to the Government of Himachal Pradesh directed all the Executive Engineers to provide the continuous work to all the daily waged workers without any break. If he (petitioner) would have been allowed to work without any break, he would have completed eight years of continuous service on 31.12.2007 and ten years of continuous service on 31.12.2009. In accordance with the policy of the State Government as framed/approved in Mool Raj Upadhyaya's case he is entitled to the regularization of his services as a work charged beldar w.e.f. 01.1.2010 in the pay scale of Rs.4910-10680/- with all other perks and allowances. Presently, he is working with the respondent/department as a beldar on work charge/regular basis. The respondent indulged in unfair labour practice. His act and conduct is/was also illegal and unjustified as well as violative of the provisions of Sections 25-F, 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- "(i) The Hon'ble Court kindly be set aside the illegal period of breaks from 21.01.2000 to 31.12.2001 and directed to respondent to pay the wages of applicant for breaks period and counted the said period in continuity of service for the purpose of his regularization.
  
- (ii) The Hon'ble Court kindly be again directed to respondent to grant the work-charge status to the applicant after completion of 10 years continuous service i.e. w.e.f. 01.01.2010 in the pay scale of Rs.4900-10680/- and further directed to respondent to pay the arrear to the applicant 01.01.2010 to onwards along with 12% interest from the amount due to till the date of realization the amount.

- (iii) The Hon'ble Court kindly be further directed to respondent to fix the applicant is beldar seniority list of work-charge/regular cadre above to junior.
- (iv) Any other relief deemed fit may kindly be granted in the favour of applicant".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of Himachal Pradesh is a necessary party to the petition. It has not been joined as a party/respondent. The petition is bad for non-joinder of the necessary parties. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on 01.06.2000. However, it has been denied that the artificial/fictional breaks were provided to the petitioner from time to time as alleged. The petitioner was an intermittent worker. He used to work as per his convenience. Despite the paucity of funds, continuous work for the whole months or more than 240 days was provided to the petitioner. He used to absent from his duties. As and when the petitioner reported for duty, the muster roll was issued in his name. The services of the petitioner have already been regularized w.e.f. 17.2.2012. He is debarred from claiming parity with the workmen namely S/Sh. Om Prakash and Anoop Kumar, who were employed in the year 2002. The petitioner is claiming the benefit for the years 2000-2001. The services of S/Sh. Om Prakash and Anup Kumar were regularized after the regularization of the services of the petitioner. Shri Om Prakash stands superannuated. The directions issued by the department per letter dated 27.3.2006 are not applicable to the case of the petitioner since he used to willfully remain absent from his duties. The policy framed in Mool Raj Upadhyaya's case does not apply to the case of the petitioner. As per that policy one time benefit was given to the employees who had completed 10 years of service as on 31.12.1993 or the employees who had rendered one or more year of service, but had not completed 10 years of service as on 31.12.1993. The petitioner does not fulfill the criteria as laid down in Mool Raj Upadhyaya's case. The regularization policy dated 20th July, 2011 issued by the Government of Himachal Pradesh applies to the petitioner. Under this policy, the cut off date for considering an employee for regularization of his services is 31.3.2011 on the completion of eight years continuous service with a minimum of 240 days in a calendar year subject to the availability of the post. Eight years of continuous service is only an eligibility criteria. The regularization shall be from prospective effect i.e. after the date of the issuance of orders of the regularization on completion of the codal formalities. The petitioner completed eight years of continuous service in the year 2009. His services have been rightly regularized as per the policy of the State. He (respondent) did not indulge in any unfair labour practice. No provision of the Act has been flouted. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 22.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the years 2000 & 2001 is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.

3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? ..OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-
- Issue No.1 : No  
 Issue No.2 : Yes  
 Issue No.3 : Not pressed  
 Issue No.4 : No  
 Relief. : Claim petition dismissed vide operative portion of the Award.

#### REASONS FOR FINDINGS

##### ISSUE NO.1

8. The petitioner Shri Shamsher Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that the work for 240 days or more was provided to him by the respondent during the period of the alleged breaks. He also denied that he used to remain absent because of which he could not complete 240 days of work. Further, he denied that no fictional breaks were given to him by the respondent and he has instituted a phoney petition.

9. Conversely, Shri P.S. Rana, Executive Engineer, I&PH, Padhar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the absence of the petitioner was subsequently marked fraudulently in the muster rolls. Self stated, the petitioner admitted the contents of the muster rolls and received the payment. He denied that the petitioner and others were given the breaks depending upon the availability of the work and the budget. He also denied that the persons junior to the petitioner kept on serving the department continuously.

10. Ex. RW1/A is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/F.

11. Exts. RW1/B and C are the mandays charts pertaining to S/Sh. Anup Kumar and Om Prakash, respectively.

12. Ex. RW1/D is the copy of the letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. Vide this letter, all the Executive Engineers were directed to engage the labourers on full month basis as the Courts have not recognized the fictional breaks and have held such persons to be in continuous employment on daily wage basis.

13. Ex. RW1/E is the copy of the letter dated 20th July, 2011 issued by the Personnel Department, Govt. of Himachal Pradesh regarding regularization of daily waged/contingent paid workers.

14. Exts. P-1 to P-18 are the copies of the muster rolls which were issued by the respondent in the name of the petitioner and other workmen.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. From the mandays charts Exs. RW1/A and F, it can be gathered that the petitioner was initially appointed on 01.6.2000. These mandays charts are not in dispute. Admittedly, the petitioner is still serving the respondent/department and his services have already been regularized.

16. Relying upon CWP No.5900/2010-F titled as Shyam Lal versus State of Himachal Pradesh through Secretary (PWD) to the Government of Himachal Pradesh, Shimla and others, decided on 18.12.2012 by our Hon'ble High Court, the ld. Authorized Representative and counsel for the petitioner argued that the work for 240 days in a year was not provided to their client by the respondent wrongly and illegally. The break period is required to be counted for the purpose of continuous service and their client is entitled to the regularization at an early date than the date on which his services have been regularized.

On the other hand, the ld. DDA urged that the work for 240 or more days in a year was provided to the petitioner by the respondent. The petitioner, who was an intermittent worker, used to remain willfully absent from his duties because of which he could not complete 240 days of work. No intentional/fictional break was provided to the petitioner at any point of time as alleged.

17. To my mind, the contention of the ld. DDA for the respondent holds the force and is sustainable for the reasons discussed hereinafter.

18. Section 25-B of the Act postulates as under:-

“25B. Definition of continuous service- For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
  - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
    - (ii) two hundred and forty days, in any other case;
  - (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- 
- (i) ninety-five days, in the case of a workman employed below ground in a mine; and
  - (ii) one hundred and twenty days, in any other case.

**Explanation.**—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which—

- (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;
- (ii) he has been on leave with full wages, earned in the previous years;
- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks”.

19. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for at least 240 days in a period of 12 calendar months to the workman for the purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duty bound to provide the work for 240 days in a period of 12 calendar months to the employee/petitioner. In *Digwadih Colliery v. Workmen*, AIR 1966 SC 75, it has been held that “service for 240 days in a period of 12 calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted”. The fiction of law converts service of 240 days in a period of 12 calendar months into continuous service for one complete year.

20. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

21. Now comes the all important question as to whether artificial breaks were provided by the respondent to the petitioner as alleged or not?

To my thinking, the answer to this query is in the negative. As already mentioned, the mandays charts Exs. RW1/A and F unfold that the services of the petitioner were initially engaged on 01.6.2000. From the date of his initial engagement to 31.12.2001, the petitioner was provided the work for more than 240 days in a calendar year by the respondent. However, he worked for less than 240 days and remained absent from his duties. Ex. RW1/A also highlights that the petitioner did not work for the days for which the muster rolls were issued in his name by the respondent. Sometimes he worked for less than 10 days despite the fact that the muster roll for the entire month was issued in his favour. He (petitioner) cannot be allowed to take advantage of his own wrongs. If the absence of the petitioner was wrongly marked or a line was wrongly drawn in the muster roll(s) showing that he (petitioner) has not reported for duty, or the intentional breaks were given to him then why he did not agitate the said fact earlier or at the time of the receipt of the payment for the working days put in by him and for which he was shown present? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. The break period in question relates to the years 2000 & 2001. The industrial dispute was raised by the petitioner after more than 10 years. The facts that the petitioner remained tight lipped and complacent about his rights for such a

long period as well as received the payment(s) without any protest speak volumes about the truthfulness and veracity of his claim. The act and conduct of the petitioner is nocuous to his cause. Simply because no show cause notice was issued to the petitioner by the respondent for his willful absence from duty from time to time or no disciplinary proceedings were initiated against him by the respondent/employer, the same will not come to his (petitioner's) rescue taking into consideration the facts narrated above.

22. So far as Shyam Lal's case (cited supra) is concerned, there is nothing in the judgment of the Hon'ble High Court to show that the petitioner/workman Shri Shyam Lal was provided the work for more than 240 days in a calendar year by the respondent/employer. The mandays chart produced in that case revealed that the petitioner was prevented from completing 240 days of work to deprive him the status and privileges of a work charge/regular employee. Further, in Shyam Lal's case there is nothing to establish that the payment for the actual working days was received by the workman without any protest. The same is not the situation in the present case. The catena of law laid down in Shyam Lal's case in no way helps the petitioner.

23. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner by the respondent. He is not entitled to any relief.

24. This issue is decided against the petitioner and in favour of his opponent.

#### ISSUE NO. 2

25. Taking into account my findings on issue No.1, it is held that the instant claim petition is not maintainable in the present form.

26. This issue is also decided against the petitioner.

#### ISSUE NO. 3

27. Not pressed

#### ISSUE NO. 4

28. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

29. This issue is decided in favour of the petitioner and against the respondent.

#### RELIEF (ISSUE NO. 5)

30. As a sequel to my findings on the various issues above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

31. The reference is answered in the aforesaid terms.

32. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

33. File after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of December, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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#### IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 19/2013  
Date of Institution : 23.02.2013  
Date of Decision : 13.12.2013

Smt. Savitri Devi w/o Shri Sunder Singh, r/o Village Morla Brang, P.O. Brang, Tehsil Sarkaghat, District Mandi, H.P. ....Petitioner.

*Versus*

The Executive Engineer, HPPWD Division, Dharampur, District Mandi, H.P.

....Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
                      : Sh. Vijay Kaundal, Adv.  
For the Respondent : Sh. Soham Kaushal, ADA

#### AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Smt. Savitri Devi W/O Shri Sunder Singh, R/O Village Morla Brang, P.O. Brang, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 8-7-2005 by The Executive Engineer, HPPWD Division, Dharampur, District Mandi, H.P. without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not,

what amount of back wages, seniority, past service benefits and compensation the above Ex-worker is entitled to from the above employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily wager on the muster rolls by the respondent on 17.11.1998. She uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, her services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). She had completed 240 days of work in each and every calendar year of her employment as well as in a block of 12 calendar months preceding the date of her illegal retrenchment i.e. 08.7.2005. Before the termination of her services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to her (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as a daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to her (petitioner) were not retrenched from service alongwith her. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to her (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith her. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her re-engagement, an opportunity of re-employment was not given to her (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their re-engagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of reemployment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. She (petitioner) is unemployed from the date of her disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon’ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon’ble Court further directed to respondent to regularized the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon’ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches.

The petitioner has not come to the Court with clean hands. She has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by her act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. 17.11.1998 and she worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. She was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the non-availability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been re-engaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Re-engagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been re-engaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by her without any protest. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.
5. Per order dated 02.7.2013, following issues were struck:-
  1. Whether the termination of the services of the petitioner w.e.f. 08.07.2005 by the respondent is illegal and unjustified as alleged? ..OPP.
  2. Whether the petition is not maintainable in the present form? ..OPR.
  3. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? ..OPR.
  4. Whether the claim petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR.
  5. Whether the petitioner is estopped from filing the claim petition by her act and conduct as alleged. If so, its effect? ..OPR.
6. Relief.
7. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

- Issue No.1 : Yes
- Issue No.2 : Not pressed
- Issue No.3 : Not pressed
- Issue No.4 : No
- Issue No.5 : Not pressed

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Relief. : Claim petition allowed in part vide operative portion of the Award.

## REASONS FOR FINDINGS

### ISSUE NO. 1

8. The petitioner Smt. Savitri Devi stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety. She also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to her (PW1) and retained in service by the respondent.

In the cross-examination, she admitted that Dharampur Division of HPPWD was created in the year 1998. She denied that with the creation of new Division, the labour became surplus. She admitted that 1087 other workers were removed from service alongwith her. She denied that no person junior to her has been retained in service by the respondent and her services have been dispensed with in a rightful manner.

9. Conversely, Sh. Anil Sangrai, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of her services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as a daily waged beldar. Her services were terminated w.e.f. 08.7.2005. He admitted that Smt. Mamta Devi was reengaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before reengaging her services as a daily wager no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 04.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005. Ex. RW1/C is the copy of the termination notice given to Smt. Mamta Devi by the respondent.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll in the month of November, 1998 and she worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 04.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex.PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1998. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of re-engaging her services, an opportunity of re-employment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

#### ISSUES No. 2, 3 and 5

18. Not pressed.

#### ISSUE NO. 4

19. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

20. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period she is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she was not gainfully employed. 21. This issue is also decided in favour of the petitioner and against the respondent.

#### RELIEF (ISSUE NO. 6)

22. As a sequel to my findings on the issues No.1 and 4, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- (Rupees Fifty Thousand only) to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of December, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

#### IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 209/2012  
Date of Institution : 17.4.2012  
Date of Decision : 13.12.2013

Shri Roop Lal s/o Shri Sarwan Ram, r/o Village Hiun, P.O. Giun, Tehsil Sarkaghat, District Mandi, H.P. ....Petitioner.

*Versus*

The Executive Engineer, HPPWD Division Dharampur, District Mandi, H.P.  
....Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Vijay Kaundal, Adv.  
For the Respondent : Sh. Soham Kaushal, ADA

#### AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Roop Lal S/O Sh. Sarwan Ram, Village-Hiun, P.O. Giun, Tehsil Sarkaghat, Distt. Mandi, H.P. by The Executive Engineer, HPPWD Division Dharampur, Distt. Mandi, (H.P.) w.e.f. 09.2.2004 without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, to what amount of back wages, seniority, past service benefits & compensation the above aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the amended statement of claim/demand) is that his services were engaged by the respondent as a daily waged beldar on 11.12.1998. He worked as such up-to 09.2.2004 as well as completed 240 days of work in each and every calendar year of his employment. On the said date i.e. 09.2.2004, his services were terminated by the respondent arbitrarily. Before the disengagement of his services, neither any notice was given to him nor prior sanction of the Government was obtained by the respondent. Sufficient work of permanent nature is/was available with the respondent. At the time of his termination, the persons junior to him (petitioner) were retained in service by the respondent. The latter has not supplied the seniority list to him despite repeated requests. He is the only earning member in the family. After the termination of his services, it has become difficult for him to make both the ends meet. A demand notice was served upon the respondent by him. Conciliation proceedings were initiated, but in vain. The act and conduct of the respondent is illegal and unjustified. It is also violative of the various provisions of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, he (petitioner) prays that the termination order dated 09.2.2004 be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition. Preliminary objections have been raised to the effect that the reference and claim petition are not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The claimant/petitioner is estopped from filing the claim petition by his act and conduct. On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar and retrenched during the month of February, 2004. The petitioner and other workmen were removed from service as per the decision/order of the Chief Engineer, HPPWD, Central Zone, Mandi. All the retrenched workmen were subsequently re-engaged in a phased manner. The petitioner did not join his duty. Since the petitioner failed to report for duty, the question of retaining the persons junior to him in service does not arise. No provision of the Act has been flouted. The petition is meritless. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been filed by the petitioner.

5. Per order dated 20.9.2012, following issues were struck:-

1. Whether the services of the petitioner were terminated by the respondent w.e.f. 09.2.2004 wrongly and illegally as alleged? ..OPP.
  
2. Whether the reference is not maintainable in the present form? ..OPR.

3. Whether the petition suffers from the vice of delay and laches as alleged. If so, its effect? ..OPR.
4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? ..OPR.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? ..OPR.
6. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes  
 Issue No.2 : Not pressed  
 Issue No.3 : No  
 Issue No.4 : Not pressed.  
 Issue No.5 : Not pressed  
 Relief. : Claim petition allowed vide operative part of the Award.

## REASONS FOR FINDINGS

### ISSUE NO.1

8. The petitioner Shri Roop Lal stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that he worked as a daily waged beldar up-to the month of February, 2004. He also admitted that his services were terminated by the respondent/department after serving a notice and paying the retrenchment compensation. At the time of the receipt of the compensation, he did not raise any objection. He admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of the new Division the labour became surplus. He admitted that he and 1697 other workers were removed from service by the respondent. He denied that no person junior to him was retained in service by the respondent and the industrial dispute has been raked by him at a belated stage.

9. Conversely, Shri Anil Sangrai, Executive Engineer, HPPWD Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In his cross-examination, he denied that at the time of the disengagement of the services of the petitioner the work and funds were available.

10. Ex. PW1/B is the seniority list/year-wise mandays chart in respect of Shri Shashi Kant s/o Shri Bihari Lal, a daily wager working under the respondent.

10A. Ex. RW1/A is the mandays chart relating to the petitioner.

11. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar. The mandays chart Ex. RW1/A produced by the respondent is not in dispute.

It depicts that the petitioner served the respondent from the year 1999 to 2004. In the year 2004, he worked for only 33 days. The respondent has admitted that the services of the petitioner were terminated on 09.2.2004 pursuant to an order passed by the Chief Engineer, HPPWD, Central Zone, Mandi.

12. The version of the respondent is that all the retrenched workmen were re-engaged in a phased manner. The petitioner did not report for duty because of which he is not entitled to any protection under the Act. No document has been placed/exhibited on the file by the respondent evidencing that at the time of the reinstatement of the workmen retrenched during the month of February, 2004, a notice was sent to the petitioner calling upon him to resume his duties. The contention of the respondent that the petitioner failed to join his duties along-with the other retrenched workmen thus seems to be false and baseless.

13. Ex. PW1/B i.e. seniority list/year-wise mandays chart pertaining to Shri Shashi Kant unfolds that his services were engaged by the respondent in the month of January, 2000. Shri Shashi Kant is junior to the petitioner who was employed in the year 1999. Ex. PW1/B clarifies that Shri Shashi Kant kept on serving the respondent/department continuously. His services were not terminated by the respondent along-with the petitioner and others in the month of February, 2004. Retaining the junior at the cost of the senior is nothing but unfair labour practice. That being so, it can be safely said that the respondent failed to abide by the principle of 'last come first go'. His action thus contravenes the provisions of Section 25-G of the Act. The termination of the services of the petitioner is illegal and unjustified.

14. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them were allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workers, the petitioner is also entitled to these reliefs.

15. This issue is decided in favour of the petitioner and against the respondent.

#### ISSUES No. 2, 4, AND 5

16. Not pressed.

#### ISSUE NO. 3

17. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been

made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

18. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period he is/was out of the service. The Petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

19. This issue is also decided in favour of the petitioner and against the respondent.

#### RELIEF (ISSUE NO. 6)

20. As a sequel to my findings on the various issues, the present claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date/month of his illegal termination i.e. February, 2004. The respondent is also directed to pay lump sum amount of Rs.50,000/- (Rupees Fifty Thousand only) to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of December, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

#### IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 242/2012  
Date of Institution : 10.05.2012  
Date of Decision : 18.12.2013

Shri Hem Raj s/o Shri Amar Singh, r/o Village Lot, P.O. Baloh, Tehsil Sadar, District Mandi, H.P. ....Petitioner.

*Versus*

The Divisional Forest Officer, Forest Division, Mandi, District Mandi, H.P.

..Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : K.S. Guleria, Adv.  
For the Respondent : Sh. Soham Kaushal, ADA

## AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Hem Raj S/O Shri Amar Singh, R/O Village Lot, P.O. Baloh, Tehsil Sadar, District Mandi, H.P. from time to time during year, 1999 to June, 2009 and finally terminated w.e.f. June, 2009 by the Divisional Forest Officer, Forest Division, Mandi, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, past service benefits, seniority and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar on muster roll basis by the respondent in the month of May, 1999. He worked as such up-to the month of May, 2009. On 1st June, 2009, his services were terminated by the respondent by a verbal order. Before the disengagement of his services, neither any notice was given to him nor the retrenchment compensation was paid. At the time of his termination, the persons junior to him namely Shri Yudhbir etc. were retained in service by the respondent. The latter failed to abide by the principle of ‘last come first go’. Not only this, after the retrenchment of his services, new/fresh hands were engaged by the respondent. He was not given an opportunity of re-employment. During the period of the employment, the respondent used to give him the fictional breaks malafidely so that he does not become entitled to the status and privileges of a regular employee. The persons junior to him, who are the favorites of the respondent, were allowed to complete 240 days of work by the respondent/department. The break period is required to be counted for the purpose of his (petitioner’s) seniority. He never remained absent from his duties. The act and conduct of the respondent is illegal and unjustified. It is also violative of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short). During the break period and after the final termination of his services, he was not gainfully employed.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- (1) That the oral illegal retrenchment order dated: 01-06- 2009, may kindly be set-aside & respondent/employer may be directed to re-engage/reinstate the applicant continuously with back wages & all consequential benefits.
- (2) That the period of interrupted service may be counted towards continuous service & respondents/employer may be directed to consider the period of his continues service for the purpose of work charge status/regularization in accordance with the judgment of Apex Court in this behalf with all consequential benefits”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition/reference is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, it has been owned that the services of the petitioner were engaged in the month of May, 1999. However, it has been pleaded that the petitioner was appointed as a casual labourer to carry out various seasonal forestry works in the department. Neither the services of the petitioner were disengaged nor artificial breaks in service were provided to him at any point of time. The petitioner worked intermittently. At the time of his initial engagement in the month of May, 1999, he (petitioner) was duly apprised by the field staff that he (respondent) shall not be in a position to provide the work for the whole year and his (petitioner's) services shall be coterminous with the closure of the season. The petitioner was employed after he consented for doing the seasonal activities like plantation and fencing etc. The claimant/petitioner was an intermittent worker. He used to work as per his convenience. Despite the availability of the seasonal work, he used to absent from his duties. In some of the years, he did not report for duty even for a single day. The work is provided to the seasonal/casual workers as per its availability and the funds. The services of the casual labourers are utilized by following the principle of 'last come first go'. As and when the petitioner approached him (respondent), his daily waged services were duly utilized. After June, 2009, the petitioner altogether stopped working and abandoned the job. In-fact, from 01.07.2009 onwards, the petitioner never reported for duty. The instant industrial dispute has been raised by the petitioner at a belated stage in the year 2010. He (petitioner) is precluded from claiming parity with the workmen, who worked in continuity. No provision of the Act has been flouted. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition and refuted the objections put forth by the respondent. It has been pleaded that he never absented from his duties or abandoned the job.

5. Per order dated 08.01.2013, following issues were struck:

1. Whether the termination of services of the petitioner by the respondent from time to time during the year, 1999 to June, 2009 is/was illegal and unjustified as alleged? ..OPP.
2. Whether the final termination of services of the petitioner by the respondent w.e.f. June, 2009 is illegal and unjustified as alleged? ..OPP.
3. Whether the claim petition is not maintainable in the present form? ..OPR.
4. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No

Issue No.2 : No

Issue No.3 : Yes

Issue No.4 : No

Relief. : Claim petition dismissed vide operative portion of the Award.

**REASONS FOR FINDINGS****ISSUES NO.1 AND 2**

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. Shri Hem Raj (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that at the time of his employment, it was duly conveyed to him that his services have been engaged for undertaking the seasonal forestry works only. He also denied that as and when he reported for duty, the work was provided to him by the respondent/department. He admitted that he did not work for a single day in the year 2002. He also admitted that he served for 23, 29 and 28 days in the years 2003, 2004 and 2007, respectively. Further, he admitted that in the month of June, 2009, he himself stopped reporting for duty. Self stated, the instant case was instituted. He feigned ignorance about the fact that after June, 2009, the respondent is providing the seasonal work to the casual labourers. Volunteered, he did not report for duty. Nowadays, he works privately on daily basis and gets Rs.200/- per day. He is not aware of the fact that the daily wages being paid by the Government are less than Rs.200/-. He denied that since he used to earn more by working privately, he voluntarily left the job and used to remain absent from his duties.

10. Conversely, Shri H.K. Sarwata, Divisional Forest Officer, Mandi (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that intentional breaks in service were provided to the petitioner from time to time. He admitted that the persons junior to the petitioner are serving under him (RW1). He denied that the services of the petitioner were terminated unlawfully.

11. Ex. RW1/A is the mandays chart relating to the petitioner.

12. Ex. RW1/B is the list of daily wagers working under the respondent.

13. Exts. R-1 to R-22 are the copies of the muster rolls, which were issued by the respondent/department in the name of the petitioner from time to time.

14. Exts. R-23 to R-29 are the copies of the bills. They indicate that the petitioner worked with the respondent on bill basis in the years 2008 and 2009.

15. It is the admitted case of the parties that the services of the petitioner were engaged in the month of May, 1999. The respondent (RW1) in his examination-in-chief itself stated that the petitioner was employed as a daily wager. The respondent has not placed/exhibited on the file any document evidencing that the services of the petitioner were engaged as a casual/seasonal labourer for carrying out the seasonal works only to his (petitioner's) knowledge.

16. The version of the petitioner is that from the date/month of his initial engagement to May, 2009, artificial/fictional breaks in service were provided to him by the respondent. His services were wrongly and illegally terminated by the respondent on 1st June, 2009. While denying the said facts, the respondent has pleaded that the petitioner was only a casual/seasonal worker, who used to work intermittently as per his sweet will and convenience. No intentional breaks in

service were provided to the petitioner at any point of time. After June, 2009, (i.e. from 01.7.2009), the petitioner stopped reporting for duty of his own accord and free volition. His services were never finally terminated as alleged.

17. Firstly, I proceed to decide as to whether fictional breaks in service were given to the petitioner by the respondent as alleged or not?

Ex. RW1/A is the mandays chart relating to the petitioner. Its perusal discloses that the petitioner worked under the respondent from 1st May, 1999 to 30th June, 2009. The petitioner (PW1) in his cross-examination admitted that he did not serve the respondent for a single day in the year 2002, whereas, he worked for 23, 29 and 28 days in the years 2003, 2004 and 2007 respectively.

18. If intentional breaks in service were being provided to the petitioner by the respondent time and again as alleged, then why he (petitioner) did not agitate the said fact earlier or at the time of the receipt of the payment for the working days actually put in by him? Exts. R-23 to R-29 unfold that in the years 2008 and 2009, the petitioner worked under the respondent on bill basis. A person not working for a single day or for less than 50 days in the whole year cannot be permitted to countenance that artificial/fictional breaks were provided to him by the respondent/employer wrongly and illegally. The facts that the petitioner remained tight lipped and complacent about his rights for more than 10 years as well as received the payments without any protest speak volumes about the truthfulness and veracity of his claim. To my mind a false plea of intentional breaks has been put forth by the petitioner so as to derive the benefits of a regular employee with a malafide intention and ulterior motive. No artificial/fictional breaks were given to the petitioner by the respondent during the course of the employment.

19. Now comes the question as to whether in the month of June/July, 2009, the services of the petitioner were finally terminated by the respondent (as alleged) or not?

In the reply, the respondent has pleaded that w.e.f. 01.07.2009 the petitioner willingly left the job and never reported back for duty. During the crossexamination, the petitioner (PW1) admitted that in the month of June, 2009, he left the job voluntarily. Self stated, the present case was instituted.

20. There is no denial of the fact that the abandonment of service by a workman is required to be proved like any other fact by the respondent/employer. It is equally settled that the admission is the best piece of evidence and the facts admitted need not be proved. As already mentioned, the petitioner (PW1) has categorically admitted that in the month of June, 2009, he voluntarily stopped reporting for duty. Since the petitioner abandoned the job of his own accord and free volition by no stretch of imagination, it can be said that his services were terminated by the respondent in contravention of the provisions of the Act.

21. It appears to me that the avarice of the petitioner to grab the job, money and other undue benefits has forced him to prefer a totally false and baseless claim. He is not entitled to any relief.

22. These issues are decided against the petitioner and in favour of the respondent.

#### ISSUE NO. 3

23. In view of my findings on the issues No.1 and 2 above, it is held that the claim petition is not maintainable in the present form. The same is malafide.

24. This issue is also decided against the petitioner.

## ISSUE NO. 4

25. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

26. This issue is decided in favour of the petitioner and against the respondent.

## RELIEF (ISSUE NO. 5)

27. As a sequel to my findings on the issues No. 1 to 3 above, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed with costs quantified as Rs.3000/- (Three thousand only).

28. The reference is answered in the aforesaid terms.

29. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

30. File after due completion be consigned to the Record Room.

Announced in the open Court today this 18th day of December, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 20/2010  
Date of Institution : 26.02.2010  
Date of Decision : 18.12.2013

Shri Ravi Kumar s/o Shri Amar Chand, r/o Q. No.337/S-1, BBMB Colony, Sunder Nagar,  
District Mandi, H.P. ..Petitioner.

*Versus*

The Chairman, Himachal Dental College, Sunder Nagar, Distt. Mandi, H.P.

..Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Mahesh Chopra, Adv.

For the Respondent : Sh. A.C. Chandel, Adv.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Ravi Kumar S/O Sh. Amar Chand by the Chairman, Himachal Dental College, Sunder Nagar, Distt. Mandi, H.P. w.e.f. 01.12.2003 without following the provisions of the Industrial Disputes Act, 1947, as alleged by workman, is legal and justified? If not, what relief of service benefits, including seniority and compensation the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a part time sweeper on 18.11.1999 by the respondent. With effect from 08.3.2000, he was appointed as a safai karamchari by the respondent on regular basis. He continuously worked as such up-to 1st December, 2003 as well as completed more than 240 days of work in each and every calendar year of his employment. On 29.10.2003, he (petitioner) applied for one month medical leave. After availing the leave, he reported for duty on 01.12.2003. On that day he was not allowed to join his duties by the respondent on the pretext that his services are no longer required and have been terminated. Before the disengagement of his services, neither any notice was given to him nor he was afforded an opportunity of being heard. As per the terms and conditions of the appointment, he is/was entitled to the regular status on completion of three years of service. Such status has been denied to him. The act and conduct of the respondent is illegal and unjustified. It is also violative of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, he (petitioner) prays that the termination order dated 01.12.2003 be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objection has been taken to the effect that the claim petition is not maintainable.

On merits, it has been owned that the services of the petitioner were engaged as a part time sweeper for four hours daily vide office order dated 17.11.1999. Per appointment letter dated 02.3.2000, the petitioner was again asked to join his duty. The petitioner submitted the joining report on 09.3.2000. He was appointed on probation and not as a regular/permanent employee as claimed. Just after the appointment and during the probation period the petitioner started remaining absent from duty. During the probation period, the services of the petitioner are/were liable to be

terminated without assigning any reason. Despite that he (respondent) issued warning letters to the petitioner time and again regarding his absence from duty. Ultimately, a show cause notice dated 29.10.2003 was given to the petitioner asking him to explain his position regarding the irregular attendance. No reply to such notice was furnished by the petitioner. It stands admitted that on 29.10.2003, the petitioner had applied for medical leave. Per letter dated 06.11.2003, the petitioner was directed to appear before the Civil Surgeon, Mandi for the medical check up. The Civil Surgeon was requested to medically examine the petitioner and make recommendations as to how much leave is required by him (petitioner) for recuperating. In the letter dated 06.11.2003, it was also mentioned that the expenses for medical examination will be borne by him (respondent). The petitioner did not comply with the letter/order dated 06.11.2003 despite its receipt. After 29.10.2003, the petitioner did not apply for leave. He was again warned regarding the misconduct. Since the petitioner failed to comply with the orders issued by him (respondent), he (respondent) was compelled to declare the post vacant. It was also ordered that the vacant post be filled on temporary basis. The services of the petitioner were not disengaged in a wrongful manner as alleged. The mandatory provisions of the Act have been duly followed. No provision of the Act has been flouted. A frivolous and vexatious claim petition has been instituted by the petitioner with a view to harass him (respondent). The petition is meritless. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that despite his appointment for four hours daily, he performed the duty throughout the day. False documents regarding his (petitioner's) absence from duty have been prepared by the respondent.

5. Per order dated 04.11.2011, following issues were struck by my ld. Predecessor:

1. Whether the disengagement of the petitioner w.e.f. 01.12.2003 is violative of the provisions of Sections 25-F, 25-G and 25-H of the Act as alleged. If so, to what effect, the petitioner is entitled to? ..OPP.
2. Whether the reference is not maintainable as alleged. If so, to what effect? ..OPR.
3. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Partly Yes, Partly No

Issue No.2 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

## REASONS FOR FINDINGS

### ISSUE NO. 1

8. The petitioner Shri Ravi Kumar stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that he used to remain absent from his duties and the letters Exts. R4 to R8 in this regard were issued to him by the respondent. He also denied that letter Ex. R9 was written to him by the respondent to appear before the Civil Surgeon, Mandi for medical examination. He used to proceed on leave after informing the supervisor. He denied that he used to disobey the orders of the management and has instituted a phoney petition.

9. Conversely, Shri Mani Mahesh Sharma, Steno-Typist in the Dental College, testified as RW1. While placing on record Ex. RW1/B i.e. the authority letter issued in his name by the Principal (respondent), he corroborated on oath the contents of the reply. Ex. RW1/A is the affidavit furnished by RW1 in terms of Order 18 Rule 4 CPC.

In the cross-examination, he admitted that on 08.3.2000, the petitioner was employed on full time basis and he worked up-to 01.12.2003. He (RW1) does not know that the petitioner worked for 240 days. He admitted that the services of the petitioner were terminated on 01.12.2003. He also admitted that after the disengagement of the services of the petitioner, new safai karamcharis were appointed. The petitioner was not given an opportunity of reemployment. He (RW1) admitted that the petitioner was a regular employee. He denied that the services of the petitioner were terminated unlawfully.

10. Mark-A is the copy of the medical certificate dated 29.10.2003 issued by Dr. R.K. Gupta (MO Incharge), New Life Clinic, Sunder Nagar. It depicts that the petitioner was advised complete bed rest for one month.

11. Ex. R1 is the copy of an office order dated 17.11.1999 issued by the respondent. It reveals that the services of the petitioner were engaged as a part time sweeper for four hours daily on payment of Rs.800/- per month.

12. Ex. R2 is the copy of the letter dated 02.3.2000 written by the respondent to the petitioner. It shows that the petitioner was appointed as a sweeper on probation for one year which may be extended for a period of three years. During the probation period the services of the petitioner were liable to be terminated without any notice.

13. Ex. R3 is the copy of the joining report dated 09.3.2000 submitted by the petitioner in obedience to the letter dated 02.3.2000 (Ex. R2).

14. Ex. PA is the copy of the reply dated 5th December, 2005 sent to the petitioner by the respondent pursuant to the demand notice served by the former upon the latter.

15. It is the admitted case of the parties that initially the services of the petitioner were engaged as a part time safai karamchari per office order dated 17.11.1999, the copy of which is Ex. R1. Subsequently, the petitioner was appointed as a whole time sweeper vide letter dated 02.3.2000, the copy of which is Ex. R2. Joining report dated 09.3.2k (Ex. R-3) was submitted by the petitioner after receiving the letter Ex. R2.

16. Shri Mani Mahesh Sharma (RW1) in his cross-examination admitted that the petitioner was a regular/full time employee and he worked from 08.3.2000 to 01.12.2003. RW1 also admitted that the services of the petitioner were terminated on 01.12.2003. He (RW1) feigned ignorance about the fact that the petitioner had completed 240 days of work in a calendar year before the disengagement of his services. The mandays chart of the petitioner has not been placed/exhibited on the record by the respondent.

17. The version of the petitioner is that on 1st December, 2003, his services were wrongly and illegally terminated by the respondent. While denying the said fact, the respondent has pleaded

that the petitioner used to willfully remain absent from his duties. Despite issuance of various warning letters and calling the explanations, the petitioner did not improve his behaviour. The petitioner even failed to appear before the Civil Surgeon, Mandi for the medical check up in obedience to the letter dated 06.11.2003 (Ex. R9). He (respondent) was forced to declare the post, against which the petitioner was working as vacant vide office order dated 04.12.2003, the copy of which is Ex. RW1/C.

18. It is the admitted case of the respondent that for the alleged misconduct, neither the petitioner was charge-sheeted nor an inquiry was conducted against him. Therefore, the punitive action taken by the respondent against the petitioner is bad in the eyes of law.

19. The petitioner (PW1) has categorically pleaded and stated that he had completed more than 240 days of work in each and every calendar year of his employment. Section 25-F of the Act postulates as under:-

**“25-F. Conditions precedent to retrenchment of workmen.—**No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

20. There is nothing on the record to show that the provisions of the above quoted Section were complied with by the respondent before the disengagement of the services of the petitioner.

21. During the cross-examination, Shri Mani Mahesh Sharma (RW1) admitted that after the termination of the services of the petitioner, new/fresh hands were employed. While engaging new/fresh hands an opportunity of reemployment was not afforded to the petitioner.

22. Keeping in mind the above noted facts, it can be safely said that the respondent has flouted the provisions of Sections 25-F and 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

23. The impugned termination took place on 01.12.2003. From Ex. PA, it can be gathered that demand notice served upon the respondent by the petitioner under Section 2-A of the Act was received by the respondent on 2<sup>nd</sup> December, 2005. This indicates that the petitioner raised the industrial dispute within a reasonable time i.e. within a period of almost two years from the date of the termination.

24. While testifying in the Court as PW1, the petitioner has given his age as 41 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the job. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed.

25. This issue is decided in favour of the petitioner and against the respondent.

#### ISSUE NO. 2

26. Not pressed.

#### RELIEF (ISSUE NO. 3)

27. As a sequel to my findings on issue No.1, the instant claim petition succeeds in part and the same is partly allowed. The termination of the services of the petitioner by the respondent is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 01.12.2003, except back wages. Parties to bear their own costs.

28. It is made clear that the respondent will be at liberty to initiate action against the petitioner for the misconduct(s) attributed to him as per the Rules.

29. The reference is answered in the aforesaid terms.

30. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

31. File after due completion be consigned to the Record Room.

Announced in the open Court today this 18th day of December, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

#### IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 278/2012

Date of Institution : 06.07.2012

Date of Decision : 23.12.2013

Shri Satish Kumar s/o Shri Gurdass Ram, r/o Village and P.O. Dulehar, Tehsil Haroli,  
District Una, H.P. . . Petitioner.

*Versus*

The Managing Director, M/s. Addinath Rubbers Private Limited, Industrial Area, Tahliwal,  
Tehsil Haroli, District Una, H.P. . . Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. R.K. Singh Parmar, AR

For the Respondent : Sh. R.K. Bhardwaj, Adv.

#### AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Satish Kumar S/O Shri Gurdass Ram, R/O Village and P.O. Dulehar, Tehsil Haroli, District Una, H.P. by the Managing Director, M/s Addinath Rubbers Private Limited, Industrial Area, Tahliwal, Tehsil Haroli, District Una, H.P. during September, 2010 without following the provisions of Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a Helper by the respondent on 01.9.2009 after the interview. On the expiry of two months, he (petitioner) was promoted as an Operator. He continuously worked as such up-to 10.9.2010 (afternoon). On the said date i.e. 10.9.2010 at the end of the duty hours, he was directed not to report for duty on the next day i.e. 11.9.2010 as his services are/were no more required. He had completed more than 240 days of work in a block of 12 calendar months preceding the date of his termination. Before the disengagement of his services, neither any notice was given to him nor the wages in lieu of the notice period and the retrenchment compensation were paid. Neither he was charge-sheeted nor an inquiry was conducted against him before the termination of his services. At the time of the disengagement of his services, he was drawing the salary of Rs.3,480/- per month. The respondent adopted the method of pick and choose. The respondent/management has failed to maintain the seniority list of the workers. New/fresh hands have been recruited by the respondent after his termination. The act and conduct of the respondent is illegal and unjustified. It is also violative of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short). The respondent indulged in unfair labour practice.

As such, he (petitioner) prays that the termination order dated 10/11th September, 2010 be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable. The petitioner is estopped from filing the petition by his act, conduct and acquiescence. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petition is time barred.

On merits, paras 1 to 12 of the reply read thus:

- “1. Para No.1:- That the contents of Para No.1 of statement of claim are admitted.
2. Para No.2:- That the contents of the para no.2 of the claim has to be proved by the petitioner in accordance with law.
3. Para No.3:- That the contents of para No. 3 of statement of claim are wrong, incorrect, hence denied. Although the respondent has served a show cause of notice to the petitioner on dated 30-7-2011, as the petitioner was absent from his duty the document Annexure-R/1 is attached herewith for proof. Then the respondent issued a termination letter vide reference No. AR-2010, dated 29-09-2012.

Annexure R/2 is attached herewith for proof. That the respondent has also issued a show cause notice through registered post on dated 28 September, 2010, as the petitioner was absent from his duty w.e.f. 11 September, 2010.

4. Para No.4:- That contents mentioned in para no.4 needs no reply.

5. Para No.5:- That the contents mentioned in para no.5 are wrong, incorrect hence denied emphatically.
6. Para No.6:- That the contents mentioned in para no.6 are wrong, incorrect hence denied. That the respondent has paid the amount to the petitioner to the tune of Rs.2,644/- which includes salary of September, 2010 amounting Rs.1020/- and earned leave amounting Rs.1624/-. Annexure R/3 is being attached herewith for proof.
7. Para No.7:- That the contents mentioned in para no.7 are wrong, incorrect hence denied.
8. Para No.8:- That the contents mentioned in para no.8 are wrong, incorrect hence denied. The respondent had issued a show cause notice through registered post on dated 28 September, 2010. As the petitioner was absent from his duty w.e.f. 11 September, 2010.
9. Para No.9:- That the contents mentioned in para no.9 are totally wrong, and incorrect.
10. Para No.10:- That the contents mentioned in para no.10 are totally wrong and incorrect hence denied.
11. Para No.11:- That the contents mentioned in para no.11 are totally wrong, incorrect hence denied. It has to be proved by the petitioner in accordance with law.
12. Para No.12:- That the contents mentioned in para no.12 totally wrong and incorrect hence denied.

It is pertinent to mention here that the petitioner Satish Kumar had stated that he does not want to work in the respondent's firm and on dated 10-09-2010 petitioner misbehaved and quarreled with the Managing Director of the firm regarding which a General Diary entry No. 32(A), police station Haroli, District Una (H.P.) was got entered against the petitioner. Annexure R/4 is attached herewith for proof.

That the termination is not illegal void and neither bad in law. That the petitioner is neither entitled to be re-instated with full back wages nor other benefits. The respondent has given all the benefits upto the date in lieu of the termination. Hence nothing is due or unpaid to the petitioner”.

In these circumstances, the respondent prays that the petition in hand being meritless be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that he (petitioner) was prohibited from entering the factory gate on 11.9.2010 by the management and the staff. He was severely beaten up. To escape from the clutches of the management and the staff, he was left with no option, but to bite one of the agents of the management.

5. Per order dated 02.1.2013, following issues were struck:
  1. Whether the termination of the services of the petitioner by the respondent from the month of September, 2010 is illegal and unjustified as alleged? ..OPP.
  2. Whether the claim petition is not maintainable in the present form? ..OPR.

3. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? ..OPR.
4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? ..OPR.
5. Whether the petition is time barred? ..OPR.
6. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-
- Issue No.1 : Yes  
 Issue No.2 : Not pressed  
 Issue No.3 : Not pressed  
 Issue No.4 : Not pressed  
 Issue No.5 : No  
 Relief. : Claim petition allowed in part vide operative portion of the Award.

#### REASONS FOR FINDINGS

##### ISSUE NO.1

8. The petitioner Shri Satish Kumar stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that on 10.9.2010, the oil from the boiler in the factory premises had leaked. When the factory people asked him to clean the spilled oil, he refused to obey their command. Self stated, his duty hours were about to end and it was not his duty to clean the oil. He denied that he used to remain absent from his duties and voluntarily left the job.

9. Conversely, Shri Sunil Jain, Managing Director, M/s Addinath Rubbers Pvt. Ltd., Una (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he stated that when the petitioner left the job, no notice was served upon him asking him to resume his duties. Even no departmental proceedings were initiated against the petitioner.

10. Mark-A is the copy of the show cause notice dated 30.7.2010 served upon the petitioner by the respondent. It depicts that the petitioner was asked to show cause as to why he remained absent from duty w.e.f. 20.7.2010 to 28.7.2010.

11. Mark-B is the copy of a letter dated 29.9.2010 written to the petitioner by the respondent. In this letter, it has been mentioned that the petitioner is continuously absent from his duties from 11.9.2010. A letter in this regard was sent on 28.9.2010. The workman/petitioner was given one month time by the respondent to join the duty failing which his services will be terminated.

12. Ex. RW1/B is the copy of the terms of settlement which allegedly took place between the petitioner and his opponent.

13. Ex. RW1/C is the copy of the draft of salary etc. forwarded to the petitioner by the respondent under registered cover per postal receipt Ex. RW1/D.

14. Ex. RW1/E is the copy of G.D. Entry No.: 32(A) dated 10.9.2010, which was entered in Police Station, Haroli against the petitioner at the behest of Shri Prashant Kumar etc.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a helper on 01.9.2009 and after two months he was promoted as an operator. It is also the admitted case of the respondent that the petitioner worked up-to 10.9.2010. In para No.2 of the petition, the claimant/petitioner has categorically pleaded that he completed more than 240 days of continuous service in a block of 12 calendar months anterior to the date of the termination in question. Such fact has not been denied in the corresponding para of the reply by the respondent.

16. The version of the petitioner is that on 10/11 September, 2010, his services were wrongly and illegally terminated by the respondent. While denying the said fact, the respondent has pleaded that the petitioner abandoned the job of his own accord and free volition.

17. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty it cannot be presumed that he has left/abandoned the job. Admittedly, no notice was served upon the petitioner by the respondent calling upon him to resume his duties after he allegedly left the service. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner for his alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

18. So far as Ex. RW1/B i.e. the copy of the terms of settlement is concerned, its perusal unfolds that the same does not bear the signatures of the petitioner. He nowhere agreed to finally settle his account with the respondent/employer.

19. As already mentioned, the petitioner had worked for more than 240 days in a block of 12 calendar months prior to the date of his termination.

20. Section 25-F of the Act postulates as under:-

**“25-F. Conditions precedent to retrenchment of workmen.”**—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

21. There is nothing on the record to show that the provisions of the above quoted Section were complied with by the respondent before the termination of the services of the petitioner.

22. The seniority list of the workers of the respondent is there on the record. Browsing of the same unfolds that Shri Karnail Singh etc. are junior to the petitioner. The services of Shri Karnail Singh etc. were not disengaged by the respondent along-with the petitioner. This indicates that the respondent has failed to abide by the principle of 'last come first go'. His action contravenes the provisions of Section 25-G of the Act.

23. Neither the petitioner was charge-sheeted nor an inquiry was ever conducted by the respondent for the misconduct(s) attributed to him. Without following the due procedure, the respondent cannot punish the petitioner.

24. Such being the situation, I have no hesitation to conclude that the respondent has flouted the provisions of Sections 25-F and 25-G of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

25. This issue is decided in favour of the petitioner and against the respondent.

#### ISSUES NO. 2 TO 4

26. Not pressed.

#### ISSUE NO.5

27. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

28. In Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota versus Mohan Lal, Civil Appeal No. 6795 of 2013, decided on 16th August, 2013, by the Hon'ble Supreme Court of India, the issue regarding delay in raising the industrial dispute by the workman was discussed. Paras 19 and 20 of the judgment read thus:-

"19. In a subsequent decision in Balbir Singh, this Court observed that Ajaib Singh was confined to the facts and circumstances of that case. It is true that in Balbir Singh, the plea of delay was raised before the Industrial Tribunal but we would emphasize the passage from Balbir Singh

where it was said: "Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially.

20. We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the I.D. Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed."

29. In Mohan Lal's case (cited supra), the workman/petitioner worked as a work-charged employee for 286 days. The industrial dispute was raised by him after six years of the termination. The Hon'ble Apex Court opined that the interest of justice will be sub-served if in lieu of reinstatement, the compensation of Rs.1,00,000/- (one lac) is paid to the workman by the employer.

30. The impugned termination took place on 10/11 September, 2010. From the notification/reference issued by the appropriate Govt. in the month of June, 2012, it can be gathered that the Labour Inspector-cum-Conciliation Officer, Una had forwarded his report dated 06.9.2011 to the appropriate Govt. (Labour Commissioner, Himachal Pradesh). This goes to show that the industrial dispute was raised by the petitioner within a reasonable time from the date of the termination which has been held to be bad in the eyes of law in view of the provisions contained in Sections 25-F and 25-G of the Act.

31. As there is/was no delay on the part of the petitioner in raking the industrial dispute, he is entitled to the reinstatement of his services.

32. While testifying in the Court as PW1, the petitioner has given his age as 43 years. It is common knowledge that a person like the petitioner will not sit at home during the period he is/was out of the job. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

33. This issue is also decided in favour of the petitioner and against the respondent.

#### RELIEF (ISSUE NO. 6)

34. As a sequel to my findings on the issues No.1 and 5 above, the instant claim petition succeeds in part and the same is partly allowed. The termination of the services of the petitioner by the respondent on 10/11 September, 2010 is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination except back wages. Parties to bear their own costs.

35. It is made clear that the respondent will be at liberty to initiate disciplinary proceedings against the petitioner for the misconduct(s) attributed to him as per law.

36. The reference is answered in the aforesaid terms.

37. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

38. File after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of December, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 93/2010

Shri Ram Singh v/s The Additional Superintending Engineer, HPSEB (E) Division Bilaspur, H.P.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh S.S. Sippy, AR.

For the Respondent : Sh. H. S. Thakur, Adv.

**AWARD**

The above numbered reference was disposed of by this Court per Award dated 26.11.2012. On the pleadings of the parties as many as six issues were framed by the Court. Issue No.4 related to the limitation, whereas, issue No.6 pertained to the relief. Such issues read thus:

Issue No. 4: Whether the petition is time barred as alleged. If so, its effect? ..OPR.

Issue No. 6: Relief.

2. Issue No.4 was decided in favour of the workman/petitioner besides the other issues. Accordingly, the claim petition was allowed by this Court vide Award dated 26.11.2012. Issue No.6 regarding the relief granted to the petitioner per Award dated 26.11.2012 is reproduced below verbatim for ready reference:

“23. As a sequel to my findings on the various issues above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 26.5.1995 except back wages. Parties to bear their own costs”.

3. Against the Award dated 26.11.2012, the respondent *viz.* the Additional Superintending Engineer preferred CWP No.4023 of 2013 before the Hon’ble High Court of Himachal Pradesh. Such Civil Writ Petition along-with seven connected matters was disposed of by the Hon’ble High Court per judgment dated October 19, 2013. The findings recorded by this Court on the issue of delay and laches in making the reference were set aside by the Hon’ble High Court. The matter was remitted to this Court for answering the said issue on its own merits, in accordance with law.

4. After the receipt of the file by way of remand from the Hon'ble High Court of Himachal Pradesh, the parties did not lead any further evidence in support of their claim(s).

5. I have heard the ld. counsel/AR for the parties and have gone through the case file once again.

6. For the reasons detailed here under, my findings on the Issue No. 4 relating to the delay and laches are as under:-

Issue No. 4 : No

Relief : Claim petition allowed in part vide operative portion of the Award.

## REASONS FOR FINDINGS

### ISSUE No. 4

7. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

8. Now comes the all important question as to what relief should be granted/awarded to the petitioner?

The record shows that the petitioner was appointed as a daily waged beldar on 26.12.1993 and he worked intermittently as such up-to 25.5.1995. The petitioner served the respondent/Board for 139 days only. Original Application No.993/2003 against the termination in question dated 26.5.1995 was preferred by the petitioner. From the year of the institution of the Original Application before the erstwhile Hon'ble Administrative Tribunal, it can be gathered that the termination order dated 26.5.1995 was impugned by the petitioner/workman after almost eight years of the disengagement of his services. The Original Application was dismissed on 03.6.2005 by the Hon'ble Administrative Tribunal on the ground that it has no jurisdiction to deal with the same. Only thereafter, the demand notice under Section 2-A of the Act was served upon the respondent by the petitioner. The copy of the demand notice has not been placed/exhibited on the file. The reference/notification issued by the appropriate Govt. in the month of March, 2010, reveals that the failure report dated 15.7.2009 was forwarded to the Labour Commissioner, Himachal Pradesh (appropriate Govt.) by the Conciliation Officer-cum- Labour Officer, Bilaspur.

All this clearly shows that the demand notice was served upon the respondent by the petitioner after 03.6.2005 and before 15.7.2009. So far as the order Ex. PW1/B dated April 30, 2001, passed by the Hon'ble Administrative Tribunal in Original Application No. 3618/99 titled as Shri Roop Singh and Ors. v/s H.P. State Electricity Board and another is concerned, I will like to say that the browsing of the same clarifies that the services of the applicants/workmen in that case were terminated in the months of March and April, 1999. The retrenchment was challenged by the workmen namely Shri Roop Singh etc. in the same year i.e. the year 1999 itself, where after, the respondents were directed to re-engage the applicants/workmen immediately.

9. At the cost of reiteration, I will like to add that the termination in question dated 26.5.1995 was challenged by the workman/petitioner Shri Ram Singh for the first time after almost eight years by instituting Original Application No.993/2003 before the erstwhile Hon'ble Administrative Tribunal.

10. In Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota versus Mohan Lal, Civil Appeal No. 6795 of 2013, decided on 16th August, 2013, by the Hon'ble Supreme Court of India, the issue regarding delay in raising the industrial dispute by the workman was discussed. Paras 19 and 20 of the judgment read thus:-

“19. In a subsequent decision in Balbir Singh, this Court observed that Ajaib Singh was confined to the facts and circumstances of that case. It is true that in Balbir Singh, the plea of delay was raised before the Industrial Tribunal but we would emphasize the passage from Balbir Singh where it was said: “Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially.

20. We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the I.D. Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed.”

11. In Mohan Lal's case (cited supra), the workman/petitioner worked as a work-charged employee for 286 days. The industrial dispute was raised by him after six years of the termination. The Hon'ble Apex Court opined that the interest of justice will be sub-served if in lieu of reinstatement, the compensation of Rs.1,00,000/- (one lac) is paid to the workman by the employer.

12. To my thinking, the petitioner (Shri Ram Singh) is not entitled to the reinstatement of his services keeping in view all the relevant factors including the mode and manner of his appointment, nature of the employment and the length of service etc. While testifying in the Court as PW1, the petitioner has given his age as 37 years. It is common knowledge that a young man like the petitioner will not sit at home during the period he is/was out of the job. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. Taking into consideration the trite laid down in Mohan Lal's case (cited above), the factors narrated above and the ground on which the termination of the services of the

claimant/petitioner has been held to be bad in the eyes of law by this Court i.e. the contravention of the provisions of Section 25-H of the Act, I feel that it will be just and expedient if the respondent/employer is directed to pay a sum of Rs.10,000/- (ten thousand only) to the petitioner as compensation in lieu of the reinstatement.

13. This issue is decided in favour of the petitioner and against the respondent.

#### RELIEF (ISSUE NO. 6)

14. As a sequel to my findings on the various issues (including issue No.4 decided afresh today), the relief clause is required to be modified by way of necessary implication. Now para No.23 of the Award will read thus:

“ As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The disengagement of the services of the petitioner by the respondent on 26.5.1995 is set aside and quashed. The respondent is directed to pay the compensation of Rs.10,000/- (ten thousand only) to the petitioner in lieu of the reinstatement of his services as well as the other consequential benefits, if any. Such amount will be paid by the respondent to the petitioner or deposited in this Court within a period of 60 days from today failing which he (respondent) will be liable to pay the interest @ 9% per annum on the said amount from the date of the institution of this reference i.e. 23.4.2010 till the date of payment/deposit. Parties to bear their own costs.

15. The reference is answered in the aforesaid terms.

16. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

17. File after due completion be consigned to the Record Room.

Announced in the open Court today this 6th day of December, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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#### IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 117/2011

Shri Jarnail Singh v/s The Executive Engineer, HPSEB Division, Bilaspur, Distt. Bilaspur, H.P.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh S.S. Sippy, AR.

For the Respondent : Sh. H. S. Thakur, Adv.

#### AWARD

The above numbered reference was disposed of by this Court per Award dated 21.1.2013. On the pleadings of the parties as many as five issues were framed by the Court. Issue No.4 related to the limitation, whereas, issue No.5 pertained to the relief. Such issues read thus:

Issue No.4: Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect?  
..OPR.

Issue No.5: Relief.

2. Issue No. 4 was decided in favour of the workman/petitioner besides the other issues. Accordingly, the claim petition was allowed by this Court vide Award dated 21.1.2013. Issue No.5 regarding the relief granted to the petitioner per Award dated 21.1.2013 is reproduced below verbatim for ready reference:

“27. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The termination order dated 26-04-1999 is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal retrenchment i.e. 26-04-1999 except back wages. Parties to bear their own costs”.

3. Against the Award dated 21.1.2013, the respondent viz. the Executive Engineer preferred CWP No.5135 of 2013 before the Hon’ble High Court of Himachal Pradesh. Such Civil Writ Petition along-with seven connected matters was disposed of by the Hon’ble High Court per judgment dated October 19, 2013. The findings recorded by this Court on the issue of delay and laches in making the reference were set aside by the Hon’ble High Court. The matter was remitted to this Court for answering the said issue on its own merits, in accordance with law.

4. After the receipt of the file by way of remand from the Hon’ble High Court of Himachal Pradesh, the parties did not lead any further evidence in support of their claim(s).

5. I have heard the ld. counsel/AR for the parties and have gone through the case file once again.

6. For the reasons detailed here under, my findings on the issue No. 4 relating to the delay and laches are as under:-

Issue No.4 : No

Issue No.5 : Claim petition allowed in part vide operative portion of the Award.

## REASONS FOR FINDINGS

### ISSUE No. 4

7. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the

reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

8. Now comes the all important question as to what relief should be granted/awarded to the petitioner?

The record shows that the petitioner was appointed as a daily waged beldar in the month of October, 1986. Initially, he served the respondent/Board from 26.10.1986 to 24.12.1988 and, thereafter, he worked from 26.12.1988 to 25.04.1999. The termination of the services of the petitioner ordered by the respondent earlier on 25.12.1988 is not in dispute. In the second spell, the petitioner served the respondent/Board for 108 days only as is evident from the demand notice dated 20.3.2006, the copy of which is Ex. PW1/F. The termination order dated 26.4.1999 (as per the reference) was challenged by the claimant/petitioner for the first time by instituting Original Application No. 2006/2001 before the erstwhile Hon'ble Administrative Tribunal. The said Original Application was dismissed for want of jurisdiction by the Hon'ble Administrative Tribunal per order dated 06.3.2006, the copy of which is Ex. PW1/E. While dismissing the Original Application, it was observed by the Hon'ble Administrative Tribunal in the order dated 06.3.2006 that the rejection of the Original Application shall not debar the applicant/workman from claiming the relief before the appropriate Court/Forum. After the dismissal of the Original Application, demand notice dated 20.3.2006 (Ex.PW1/F) was served upon the respondent by the petitioner. The notification/reference relating to the industrial dispute was issued by the appropriate Govt. in the month of August, 2011.

9. As mentioned earlier, the termination order dated 26.4.1999 was impugned by the petitioner/workman in the year 2001 itself by instituting Original Application No.2006/2001, which was dismissed on 06.3.2006. The copy of the order is Ex. PW1/E. The petitioner approached the concerned authorities within reasonable time for the redressal of his grievances. He cannot be blamed for the delay, if any, which resulted in the disposal of the Original Application preferred by him or the issuance of the reference/notification by the appropriate Govt. after more than five years from the date of the issuance of the demand notice under Section 2-A of the Act by him (petitioner).

10. At the cost of reiteration, I will like to add that the termination in question was challenged by the workman/petitioner Shri Jarnail Singh within a reasonable time of almost two years. At the time of his cross-examination, the petitioner (PW1) denied that after the disengagement of his services in the year 1999, he did not approach the respondent for re-employment. No evidence has been led by the respondent.

11. In Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota versus Mohan Lal, Civil Appeal No. 6795 of 2013, decided on 16th August, 2013, by the Hon'ble Supreme Court of India, the issue regarding delay in raising the industrial dispute by the workman was discussed. Paras 19 and 20 of the judgment read thus:-

"19. In a subsequent decision in Balbir Singh, this Court observed that Ajaib Singh was confined to the facts and circumstances of that case. It is true that in Balbir Singh, the plea of delay was raised before the Industrial Tribunal but we would emphasize the passage from Balbir Singh where it was said: "Whether relief to the workman should be denied on the ground of delay or it should be

appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially.

20. We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the I.D. Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed.”
  
12. In Mohan Lal’s case (cited supra), the workman/petitioner worked as a work-charged employee for 286 days. The industrial dispute was raised by him after six years of the termination. The Hon’ble Apex Court opined that the interest of justice will be sub-served if in lieu of reinstatement, the compensation of Rs.1,00,000/- (one lac) is paid to the workman by the employer.
13. To my thinking, the petitioner (Shri Jarnail Singh) is entitled to the reinstatement of his services keeping in view all the relevant factors including the mode and manner of his appointment, nature of the employment and the length of service etc., more so, when the persons junior to him have been reinstated in service by the respondent in obedience to the order dated 22.8.2007 (Ex. PW1/D) passed by the Hon’ble High Court of Himachal Pradesh in CWP No.291/2006 titled as HPSEB, Vidyal Bhawan and ors. vs. Rajesh Kumar and 14 others. While deposing in the Court as PW1, the petitioner has given his age as 47 years. It is common knowledge that a young man like the petitioner will not sit at home during the period he is/was out of the job. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. He is thus not entitled to the back wages. The termination of the services of the claimant/petitioner has been held to be bad in the eyes of law by this Court under Sections 25-G and 25-H of the Act.

14. This issue is decided in favour of the petitioner and against the respondent.

#### RELIEF (ISSUE NO. 5)

15. The claimant/petitioner is granted/awarded the same relief(s) which are/were given per Award dated 21st January, 2013.

16. The reference is answered in the aforesaid terms.

17. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

18. File after due completion be consigned to the Record Room.

Announced in the open Court today this 6th day of December, 2013.

RAJAN GUPTA,  
Presiding Judge,  
*Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.*

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 128/2011

Shri Lal Singh v/s The Sr. Executive Engineer, HPSEB (Elect.) Division, Gohar, Distt. Mandi, H.P

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Bimal Sharma, Adv.

For the Respondent : Sh. Bhanwar Bhardwaj, Adv.

### **AWARD**

The above numbered reference was disposed of by this Court per Award dated 17.1.2013. On the pleadings of the parties as many as four issues were framed by the Court. Issue No.3 related to the limitation, whereas, issue No. 4 pertained to the relief. Such issues read thus:

Issue No. 3: Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR.

Issue No. 4: Relief.

2. Issue No. 3 was decided in favour of the workman/petitioner besides the other issues. Accordingly, the claim petition was allowed by this Court vide Award dated 17.01.2013. Issue No.4 regarding the relief granted to the petitioner per Award dated 17.1.2013 is reproduced below verbatim for ready reference:

“22. As a sequel to my findings on the various issues, the instant claim petition/reference succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 16.3.2000 except back wages. Parties to bear their own costs”.

3. Against the Award dated 17.1.2013, the respondent viz. the Sr. Executive Engineer preferred CWP No.3088 of 2013 before the Hon’ble High Court of Himachal Pradesh. Such Civil Writ Petition along-with seven connected matters was disposed of by the Hon’ble High Court per judgment dated October 19, 2013. The findings recorded by this Court on the issue of delay and laches in making the reference were set aside by the Hon’ble High Court. The matter was remitted to this Court for answering the said issue on its own merits, in accordance with law.

4. After the receipt of the file by way of remand from the Hon’ble High Court of Himachal Pradesh, the claimant/petitioner placed on the record the copy of the demand notice dated 27th April, 2005. He also produced the copy of the Award dated 18.6.2011 rendered by this Court in Reference No. 133/2006 titled as Shri Roop Singh and another vs. The Senior Executive Engineer, HPSEB, Electrical Division, Gohar, District Mandi, H.P.

5. I have heard the ld. counsel/AR for the parties and have gone through the case file once again.

6. For the reasons detailed here under, my findings on the issue No. 3 relating to the delay and laches are as under:-

Issue No. 3 : No

Issue No. 4 : Claim petition allowed in part vide operative portion of the Award.

## REASONS FOR FINDINGS

### ISSUE No. 3

7. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

8. In Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota versus Mohan Lal, Civil Appeal No. 6795 of 2013, decided on 16th August, 2013, by the Hon’ble Supreme Court of India, the issue regarding delay in raising the industrial dispute by the workman was discussed. Paras 19 and 20 of the judgment read thus:-

“19. In a subsequent decision in Balbir Singh, this Court observed that Ajaib Singh was confined to the facts and circumstances of that case. It is true that in Balbir Singh, the plea of delay was raised before the Industrial Tribunal but we would emphasize the passage from Balbir Singh where it was said: “Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially.

20. We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the I.D. Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed.”

9. In Mohan Lal's case (cited supra), the workman/petitioner worked as a work-charged employee for 286 days. The industrial dispute was raised by him after six years of the termination. The Hon'ble Apex Court opined that the interest of justice will be sub-served if in lieu of reinstatement, the compensation of Rs.1,00,000/- (one lac) is paid to the workman by the employer.

10. Now comes the question as to what relief should be granted/awarded to the claimant/petitioner? The date of the impugned termination is 16.3.2000. Such termination has been held to be bad in the eyes of law in view of the provisions contained in Section 25-G of the Act.

11. The mandays chart produced by the respondent is not in dispute. Its perusal discloses that the petitioner served the respondent/Board intermittently from 27.12.1989 to 15.3.2000. In almost 11 years of service, the petitioner worked for total 403 days from time to time. In the years 1995 to 1999, he did not serve the respondent even for a single day. In the years 1990 to 1992 and 2000, he worked under the respondent for less than 60 days in the whole year. He (petitioner) served for 120 and 130 days in the years 1993 and 1994, respectively.

12. In para 7 of the proof affidavit Ex. PW1/A, the petitioner (PW1) has deposed that the services of one Shri Devinder Kumar were also terminated by the respondent along-with him (petitioner). Industrial dispute was raised by Shri Devinder Kumar. He was ordered to be reinstated in service by this Court. Against the Award of this Court, the respondent filed a writ petition before the Hon'ble High Court of Himachal Pradesh, which was dismissed. Shri Devinder Kumar, who is junior to him (petitioner), has been re-engaged by the respondent and his services have already been regularized.

There is nothing to show as to when the industrial dispute was raised by Shri Devinder Kumar. In the case in hand, the demand notice dated 27.4.2005 was served upon the respondent by the petitioner after more than five years from the date of the impugned termination i.e. 16.3.2000.

13. There is no cogent and convincing evidence on the file to establish that the termination in question was challenged by the workman/petitioner Shri Lal Singh within a reasonable time or he kept the dispute alive from the very beginning.

To my thinking, keeping in view all the relevant factors including the mode and manner of the appointment of the petitioner, nature of the employment and the length of service etc., the petitioner is not entitled to the reinstatement of his services particularly when he served the respondent/Board for 403 days in all in a period of almost 11 years. In many years, the petitioner did not work for a single day. In none of the calendar year, he completed 240 days or more of work. While testifying in the Court as PW1, the petitioner has given his age as 43 years. It is common knowledge that a young man like the petitioner will not sit at home during the period he is/was out of the job. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

14. Taking into consideration the trite laid down in Mohan Lal's case (cited supra) and all other relevant factors narrated above, I feel that it will be just and expedient if the respondent/employer is directed to pay a sum of Rs.20,000/- (twenty thousand only) to the petitioner as compensation in lieu of the reinstatement of his services and other consequential benefits.

15. This issue is decided in favour of the petitioner and against the respondent.

#### RELIEF (ISSUE NO. 4)

16. Keeping in mind my findings on the various issues (including issue No. 3 decided afresh today), the relief clause is required to be modified by way of necessary implication. Now para No.22 of the Award will read thus:

"As a sequel to my findings on the issues No. 1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the services of the petitioner by the respondent on 16.3.2000 is set aside and quashed. The respondent is directed to pay the compensation of Rs.20,000/- (twenty thousand only) to the petitioner in lieu of the reinstatement of his services as well as the other consequential benefits, if any. Such amount will be paid by the respondent to the petitioner or deposited in this Court within a period of 60 days from today failing which he (respondent) will be liable to pay the interest @ 9% per annum on the said amount from the date of the institution of this reference i.e. 26.11.2011 till the date of payment/deposit. Parties to bear their own costs".

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File after due completion be consigned to the Record Room.

Announced in the open Court today this 18th day of December, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 129/2011

Shri Shyam Singh v/s The Sr. Executive Engineer, HPSEB (Elect.) Division, Gohar, Distt. Mandi, H.P.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Bimal Sharma, Adv.

For the Respondent : Sh. Bhanwar Bhardwaj, Adv.

**AWARD**

The above numbered reference was disposed of by this Court per Award dated 17.1.2013. On the pleadings of the parties as many as four issues were framed by the Court. Issue No.3 related to the limitation, whereas, issue No.4 pertained to the relief. Such issues read thus:

Issue No. 3: Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR.

Issue No. 4: Relief.

2. Issue No. 3 was decided in favour of the workman/petitioner besides the other issues. Accordingly, the claim petition was allowed by this Court vide Award dated 17.01.2013. Issue

No.4 regarding the relief granted to the petitioner per Award dated 17.1.2013 is reproduced below verbatim for ready reference:

“20. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 16.3.2000 except back wages. Parties to bear their own costs”.

3. Against the Award dated 17.1.2013, the respondent *viz.* the Sr. Executive Engineer preferred CWP No.3208 of 2013 before the Hon’ble High Court of Himachal Pradesh. Such Civil Writ Petition along-with seven connected matters was disposed of by the Hon’ble High Court per judgment dated October 19, 2013. The findings recorded by this Court on the issue of delay and laches in making the reference were set aside by the Hon’ble High Court. The matter was remitted to this Court for answering the said issue on its own merits, in accordance with law.

4. After the receipt of the file by way of remand from the Hon’ble High Court of Himachal Pradesh, the claimant/petitioner placed on the record the copy of the demand notice dated 29th April, 2005. He also produced the copy of the Award dated 18.6.2011 rendered by this Court in Reference No. 133/2006 titled as Shri Roop Singh and another vs. The Senior Executive Engineer, HPSEB, Electrical Division, Gohar, District Mandi, H.P.

5. I have heard the ld. counsel/AR for the parties and have gone through the case file once again.

6. For the reasons detailed here under, my findings on the issue No. 3 relating to the delay and laches are as under:-

Issue No. 3 : No

Issue No. 4 : Claim petition allowed in part vide operative portion of the Award.

## REASONS FOR FINDINGS

### ISSUE No. 3

7. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the

observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

8. In Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota versus Mohan Lal, Civil Appeal No. 6795 of 2013, decided on 16th August, 2013, by the Hon'ble Supreme Court of India, the issue regarding delay in raising the industrial dispute by the workman was discussed. Paras 19 and 20 of the judgment read thus:-

- “19. In a subsequent decision in Balbir Singh, this Court observed that Ajaib Singh was confined to the facts and circumstances of that case. It is true that in Balbir Singh, the plea of delay was raised before the Industrial Tribunal but we would emphasize the passage from Balbir Singh where it was said: “Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially.”
- 20. We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the I.D. Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed.”

9. In Mohan Lal's case (cited supra), the workman/petitioner worked as a work-charged employee for 286 days. The industrial dispute was raised by him after six years of the termination. The Hon'ble Apex Court opined that the interest of justice will be sub-served if in lieu of reinstatement, the compensation of Rs.1,00,000/- (one lac) is paid to the workman by the employer.

10. Now comes the question as to what relief should be granted/awarded to the claimant/petitioner?

The date of the impugned termination is 16.3.2000. Such termination has been held to be bad in the eyes of law in view of the provisions contained in Section 25-G of the Act.

11. The mandays chart produced by the respondent is not in dispute. Its perusal discloses that the petitioner served the respondent/Board intermittently from 05.10.1989 to 15.3.2000. In almost 11 years of service, the petitioner worked for total 442 days from time to time. In the years 1992, 1997 and 1999, he did not serve the respondent even for a single day. In the years 1993 and 1994, he worked under the respondent for 120 and 130 days, respectively. In the rest of the years, the petitioner served under the respondent for less than 50 days in the whole year.

12. There is no cogent and convincing evidence on the file to establish that the termination in question was challenged by the workman/petitioner Shri Shyam Singh within a reasonable time or he kept the dispute alive from the very beginning. Rather, the record shows that the demand notice dated 29.4.2005 was served upon the respondent by the petitioner after the lapse of more than five years from the date of the termination under challenge.

13. To my thinking, keeping in view all the relevant factors including the mode and manner of the appointment of the petitioner, nature of the employment and the length of service etc., the petitioner is not entitled to the reinstatement of his services particularly when he served the respondent/Board for 442 days in all in a period of almost 11 years. In many years, the petitioner did not work for a single day. In none of the calendar year, he completed 240 days or more of work. While testifying in the Court as PW1, the petitioner has given his age as 42 years. It is common knowledge that a young man like the petitioner will not sit at home during the period he is/was out of the job. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

14. Taking into consideration the trite laid down in Mohan Lal's case (cited supra) and all other relevant factors narrated above, I feel that it will be just and expedient if the respondent/employer is directed to pay a sum of Rs.20,000/- (twenty thousand only) to the petitioner as compensation in lieu of the reinstatement of his services and other consequential benefits.

15. This issue is decided in favour of the petitioner and against the respondent.

#### RELIEF (ISSUE NO. 4)

16. Keeping in mind my findings on the various issues (including issue No.3 decided afresh today), the relief clause is required to be modified by way of necessary implication. Now para No.20 of the Award will read thus:

“As a sequel to my findings on the issues No. 1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the services of the petitioner by the respondent on 16.3.2000 is set aside and quashed. The respondent is directed to pay the compensation of Rs.20,000/- (twenty thousand only) to the petitioner in lieu of the reinstatement of his services as well as the other consequential benefits, if any. Such amount will be paid by the respondent to the petitioner or deposited in this Court within a period of 60 days from today failing which he (respondent) will be liable to pay the interest @ 9% per annum on the said amount from the date of the institution of this reference i.e. 26.11.2011 till the date of payment/deposit. Parties to bear their own costs”.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File after due completion be consigned to the Record Room.

Announced in the open Court today this 18th day of December, 2013.

RAJAN GUPTA,  
Presiding Judge,  
*Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 363/2009

Shri Chhaje Ram v/s The Executive Engineer, HPSEB Electrical Division, Gohar, Distt. Mandi, H.P.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. K.S. Guleria, Adv.

For the Respondent : Sh. Abhishek Lakhpal, Adv.

**AWARD**

The above numbered reference was disposed of by this Court per Award dated 19.11.2012. On the pleadings of the parties as many as six issues were framed by the Court. Issue No.4 related to the limitation, whereas, issue No.6 pertained to the relief. Such issues read thus:

Issue No. 4: Whether the petition suffers from the vice of delay and laches? ..OPR.

Issue No. 6: Relief.

2. Issue No. 4 was decided in favour of the workman/petitioner besides the other issues. Accordingly, the claim petition was allowed by this Court vide Award dated 19.11.2012. Issue No.6 regarding the relief granted to the petitioner per Award dated 19.11.2012 is reproduced below verbatim for ready reference:

“26. As a sequel to my findings on the various issues above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 22.4.1996 except back wages. Parties to bear their own costs”.

3. Against the Award dated 19.11.2012, the respondent viz. the Executive Engineer preferred CWP No.3087 of 2013 before the Hon’ble High Court of Himachal Pradesh. Such Civil Writ Petition along-with seven connected matters was disposed of by the Hon’ble High Court per judgment dated October 19, 2013. The findings recorded by this Court on the issue of delay and laches in making the reference were set aside by the Hon’ble High Court. The matter was remitted to this Court for answering the said issue on its own merits, in accordance with law.

4. After the receipt of the file by way of remand from the Hon’ble High Court of Himachal Pradesh, the parties did not lead any oral or documentary evidence.

5. I have heard the ld. counsel/AR for the parties and have gone through the case file once again.

6. For the reasons detailed here under, my findings on the issue No. 4 relating to the delay and laches are as under:-

Issue No. 4 : No

Issue No. 6 : Claim petition allowed in part vide operative portion of the Award.

## REASONS FOR FINDINGS

## ISSUE No. 3

7. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

8. In Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota versus Mohan Lal, Civil Appeal No. 6795 of 2013, decided on 16th August, 2013, by the Hon’ble Supreme Court of India, the issue regarding delay in raising the industrial dispute by the workman was discussed. Paras 19 and 20 of the judgment read thus:-

“19. In a subsequent decision in Balbir Singh, this Court observed that Ajaib Singh was confined to the facts and circumstances of that case. It is true that in Balbir Singh, the plea of delay was raised before the Industrial Tribunal but we would emphasize the passage from Balbir Singh where it was said: “Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially.”

20. We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the I.D. Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed.”

9. In Mohan Lal’s case (cited supra), the workman/petitioner worked as a work-charged employee for 286 days. The industrial dispute was raised by him after six years of the termination. The Hon’ble Apex Court opined that the interest of justice will be sub-served if in lieu of reinstatement, the compensation of Rs.1,00,000/- (one lac) is paid to the workman by the employer.

10. Now comes the question as to what relief should be granted/awarded to the claimant/petitioner?

The date of the impugned termination is 22.4.1996. Such termination has been held to be bad in the eyes of law in view of the provisions contained in Sections 25-G and 25-H of the Act.

11. The mandays chart Ex. RW1/B produced by the respondent is not in dispute. Its perusal discloses that the petitioner served the respondent/Board intermittently from 01.2.1995 to 21.4.1996. He (petitioner) worked for total 239 days from time to time. The petitioner did not complete 240 days or more of work in any calendar year of his employment.

12. From the record, it can be gathered that the termination dated 22.4.1996 was challenged by the claimant/petitioner for the first time by instituting O.A. No. (M) 89 of 2000 before the erstwhile Hon'ble Administrative Tribunal. The said Original Application was finally disposed of by the Hon'ble Administrative Tribunal per order dated 08.08.2001, the copy of which is Mark-A. The Hon'ble Administrative Tribunal simply directed the respondents to engage the applicant/petitioner as and when the work and funds are available with them. The termination in question was not held to be bad on any count by the Hon'ble Administrative Tribunal.

13. The version of the petitioner is that the order dated 08.08.2001 (Mark-A) passed by the Hon'ble Administrative Tribunal did not have the desired effect. He was forced to prefer another Original Application bearing No.11/2002 before the Hon'ble Administrative Tribunal. Such Original Application was decided by the Hon'ble Administrative Tribunal by holding that it has no jurisdiction to deal with the same. After that, the demand notice was served upon the respondent by him (petitioner).

14. The copies of the Original Application No.11/2002 and the order pronounced on the said application by the Hon'ble Administrative Tribunal have not been placed on the record by the petitioner. He has also failed to produce/exhibit the copy of the demand notice served upon the respondent by him. From the reference/notification issued by the appropriate Govt. (Labour Commissioner, Himachal Pradesh), in the month of March, 2009, it can be gathered that the Conciliation Officer-cum-Labour Officer, Mandi, had forwarded his report dated 08.1.2008 to the appropriate Govt.

15. At the cost of reiteration, I will like to add that the petitioner served the respondent/Board for 239 days in all from 01.2.1995 to 21.4.1996. The impugned termination dated 22.4.1996 was challenged by the petitioner for the first time in the year 2000 i.e. after the lapse of almost four years by instituting O.A. No. (M) 89 of 2000 before the Hon'ble Administrative Tribunal.

16. The claimant/petitioner has not uttered a single word to the effect as to when the demand notice under Section 2-A of the Act was served upon the respondent by him. Neither the date of the demand notice has been mentioned in the statement of claim/demand and the rejoinder nor the copy of the demand notice has been produced/exhibited.

17. There is no cogent and convincing evidence on the file to show that the termination in question was challenged by the workman/petitioner Shri Chhaje Ram within a reasonable time or he kept the dispute alive from the very beginning.

18. To my thinking, keeping in view all the relevant factors including the mode and manner of the appointment of the petitioner, nature of the employment and the length of service etc., the petitioner is not entitled to the reinstatement of his services particularly when he served the respondent/Board for only 239 days in the years 1995 and 1996. While testifying in the Court as PW1, the petitioner has given his age as 39 years. It is common knowledge that a young man like the petitioner will not sit at home during the period he is/was out of the job. The petitioner has

failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

19. Taking into consideration the trite laid down in Mohan Lal's case (cited supra) and all other relevant factors narrated above, I feel that it will be just and expedient if the respondent/employer is directed to pay a sum of Rs.10,000/- (ten thousand only) to the petitioner as compensation in lieu of the reinstatement of his services and other consequential benefits.

20. This issue is decided in favour of the petitioner and against the respondent.

#### RELIEF (ISSUE NO. 6)

21. Keeping in mind my findings on the various issues (including issue No. 4 decided afresh today), the relief clause is required to be modified by way of necessary implication. Now para No.26 of the Award will read thus:

"As a sequel to my findings on the various issues above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the services of the petitioner by the respondent on 22.4.1996 is set aside and quashed. The respondent is directed to pay the compensation of Rs.10,000/- (ten thousand only) to the petitioner in lieu of the reinstatement of his services as well as the other consequential benefits, if any. Such amount will be paid by the respondent to the petitioner or deposited in this Court within a period of 60 days from today failing which he (respondent) will be liable to pay the interest @ 9% per annum on the said amount from the date of the institution of this reference i.e. 23.5.2009 till the date of payment/deposit. Parties to bear their own costs".

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File after due completion be consigned to the Record Room.

Announced in the open Court today this 18th day of December, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

#### IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 264/2010

Shri Bahadur Singh v/s The Executive Engineer, HPSEB Division, Gohar, Distt. Mandi, H.P.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Bimal Sharma, Adv.

For the Respondent : Sh. Abhishek Lakhpal, Adv.

## AWARD

The above numbered reference was disposed of by this Court per Award dated 11.12.2012. On the pleadings of the parties as many as four issues were framed by the Court. Issue No.3 related to the limitation, whereas, issue No.4 pertained to the relief. Such issues read thus:

Issue No. 3: Whether the reference is hit by the vice of delay and laches as alleged. If so, to what effect? ..OPR.

Issue No. 4: Relief.

2. Issue No.3 was decided in favour of the workman/petitioner besides the other issues. Accordingly, the claim petition was allowed by this Court vide Award dated 11.12.2012. Issue No.4 regarding the relief granted to the petitioner per Award dated 11.12.2012 is reproduced below verbatim for ready reference:

“25. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 16.3.2000 except back wages. Parties to bear their own costs.

3. Against the Award dated 11.12.2012, the respondent viz. the Executive Engineer preferred CWP No.3227 of 2013 before the Hon’ble High Court of Himachal Pradesh. Such Civil Writ Petition along-with seven connected matters was disposed of by the Hon’ble High Court per judgment dated October 19, 2013. The findings recorded by this Court on the issue of delay and laches in making the reference were set aside by the Hon’ble High Court. The matter was remitted to this Court for answering the said issue on its own merits, in accordance with law.

4. After the receipt of the file by way of remand from the Hon’ble High Court of Himachal Pradesh, the claimant/petitioner placed on the record the copy of the order dated 15.12.2009 passed by the Hon’ble High Court of Himachal Pradesh at Shimla in CWP No.1351 of 2008 titled as Bahadur Singh vs. Himachal Pradesh State Electricity Board and others as well as the copy of the Award dated 18.6.2011 rendered by this Court in Reference No. 133/2006 titled as Shri Roop Singh and another vs. The Senior Executive Engineer, HPSEB, Electrical Division, Gohar, District Mandi, H.P.

5. I have heard the ld. counsel/AR for the parties and have gone through the case file once again.

6. For the reasons detailed here under, my findings on the issue No. 3 relating to the delay and laches are as under:-

Issue No. 3 : No

Issue No. 4 : Claim petition allowed in part vide operative portion of the Award.

## REASONS FOR FINDINGS

### ISSUE No. 3

7. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this

Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

8. In Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota versus Mohan Lal, Civil Appeal No. 6795 of 2013, decided on 16th August, 2013, by the Hon'ble Supreme Court of India, the issue regarding delay in raising the industrial dispute by the workman was discussed. Paras 19 and 20 of the judgment read thus:-

- "19. In a subsequent decision in Balbir Singh, this Court observed that Ajaib Singh was confined to the facts and circumstances of that case. It is true that in Balbir Singh, the plea of delay was raised before the Industrial Tribunal but we would emphasize the passage from Balbir Singh where it was said: "Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially."
- 20. We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the I.D. Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed."

9. In Mohan Lal's case (cited supra), the workman/petitioner worked as a work-charged employee for 286 days. The industrial dispute was raised by him after six years of the termination. The Hon'ble Apex Court opined that the interest of justice will be sub-served if in lieu of reinstatement, the compensation of Rs.1,00,000/- (one lac) is paid to the workman by the employer.

10. Now comes the question as to what relief should be granted/awarded to the claimant/petitioner?

The date of the impugned termination is 16.3.2000. Such termination has been held to be bad in the eyes of law in view of the provisions contained in Sections 25-G and 25-H of the Act.

11. The mandays chart Ex. RW1/B produced by the respondent is not in dispute. Its perusal discloses that the petitioner served the respondent/Board intermittently from 01.3.1990 to 15.3.2000. In almost 10 years of service, the petitioner worked for total 454 days from time to time. In the years 1993, 1996, 1998 and 1999, he did not serve the respondent even for a single day. In the years 1990 and 1994, the petitioner worked for 125 and 127 days, respectively. In the years 1991, 1992, 1995, 1997 and 2000, he worked under the respondent for less than 60 days in the whole year.

12. In the rejoinder, the petitioner has pleaded that against the termination order, he had initially preferred an Original Application before the Hon'ble Administrative Tribunal. The same was dismissed for want of jurisdiction. After that, the matter was raised by him before the Conciliation Officer. The appropriate Govt. had refused to make a reference to the Labour Court at the first instance on the ground of delay. The order of the appropriate Govt. was assailed by him (petitioner) before the Hon'ble High Court of Himachal Pradesh by instituting CWP No.1351 of 2008, which was decided on 15.12.2009. As per the directions issued by the Hon'ble High Court in CWP No. 1351 of 2008, the reference/notification was sent to this Court by the appropriate Govt. He (petitioner) always kept the dispute alive. The plea of delay cannot be taken by the respondent/employer.

13. The copies of the Original Application, if any, preferred by the petitioner before the erstwhile Hon'ble Administrative Tribunal and the order passed on such Original Application by the Hon'ble Administrative Tribunal have not been placed on the record by him. The reference/notification issued by the appropriate Govt. (Labour Commissioner, Himachal Pradesh) in the month of October, 2010, goes to show that the Conciliation Officer-cum-Labour Officer, Mandi had sent his report dated 18.1.2007 to the appropriate Govt. From the contents of the rejoinder, it can be gathered that after considering the report dated 18.1.2007 of the Conciliation Officer, the appropriate Govt. had declined to refer the industrial dispute to this Court on the ground of delay, where after, CWP No.1351 of 2008 was preferred by the petitioner before the Hon'ble High Court of Himachal Pradesh. The reference/notification was sent for adjudication to this Court by the appropriate Govt. in obedience to the order dated 15.12.2009 pronounced by the Hon'ble High Court in CWP No.1351 of 2008.

14. The claimant/petitioner has not uttered a single word to the effect as to when the demand notice under Section 2-A of the Act was served upon the respondent by him. Neither the date of the demand notice has been mentioned in the statement of claim/demand and the rejoinder nor the copy of the demand notice has been produced/exhibited. As already mentioned, the copies of the Original Application and the order, if any, passed by the Hon'ble Administrative Tribunal are also not there on the record. The appropriate Govt. had earlier declined to refer the industrial dispute existing between the parties to the Court on the ground of delay. 15. There is no cogent and convincing evidence on the file to show that the termination in question was challenged by the workman/petitioner Shri Bahadur Singh within a reasonable time or he kept the dispute alive from the very beginning.

15-A To my thinking, keeping in view all the relevant factors including the mode and manner of the appointment of the petitioner, nature of the employment and the length of service etc., the petitioner is not entitled to the reinstatement of his services particularly when he served the respondent/Board for 454 days in all in a period of almost 10 years. In many years, the petitioner did not work for a single day. In none of the calendar year, he completed 240 days or more of work. While testifying in the Court as PW1, the petitioner has given his age as 43 years. It is common knowledge that a young man like the petitioner will not sit at home during the period he is/was out of the job. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

16. Taking into consideration the trite laid down in Mohan Lal's case (cited supra) and all other relevant factors narrated above, I feel that it will be just and expedient if the respondent/employer is directed to pay a sum of Rs.20,000/- (twenty thousand only) to the petitioner as compensation in lieu of the reinstatement of his services and other consequential benefits.

17. This issue is decided in favour of the petitioner and against the respondent.

#### RELIEF (ISSUE NO. 4)

18. Keeping in mind my findings on the various issues (including issue No.3 decided afresh today), the relief clause is required to be modified by way of necessary implication. Now para No.25 of the Award will read thus:

“As a sequel to my findings on the issues No. 1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the services of the petitioner by the respondent on 16.3.2000 is set aside and quashed. The respondent is directed to pay the compensation of Rs.20,000/- (twenty thousand only) to the petitioner in lieu of the reinstatement of his services as well as the other consequential benefits, if any. Such amount will be paid by the respondent to the petitioner or deposited in this Court within a period of 60 days from today failing which he (respondent) will be liable to pay the interest @ 9% per annum on the said amount from the date of the institution of this reference i.e. 18.11.2010 till the date of payment/deposit. Parties to bear their own costs”.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File after due completion be consigned to the Record Room.

Announced in the open Court today this 18th day of December, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

#### IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 10/2011

Shri Bhim Singh v/s The Executive Engineer, HPSEB, Electrical Division, Mandi, H.P.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. K.S. Guleria, Adv.

For the Respondent : Sh. Bhanwar Bhardwaj, Adv.

#### AWARD

The above numbered reference was disposed of by this Court per Award dated 17.1.2013. On the pleadings of the parties as many as eight issues were framed by the Court. Issue No.7 related to the limitation, whereas, issue No.8 pertained to the relief. Such issues read thus:

Issue No. 7: Whether the petition is time barred?

..OPR.

Issue No. 8: Relief.

2. Issue No.7 was decided in favour of the workman/petitioner besides the other issues. Accordingly, the claim petition was allowed by this Court vide Award dated 17.01.2013. Issue No.8 regarding the relief granted to the petitioner per Award dated 17.1.2013 is reproduced below verbatim for ready reference:

“25. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date/month of his illegal termination i.e. 25.5.1999 except back wages. Parties to bear their own costs”.

3. Against the Award dated 17.1.2013, the respondent viz. the Executive Engineer preferred CWP No.4524 of 2013 before the Hon’ble High Court of Himachal Pradesh. Such Civil Writ Petition along-with seven connected matters was disposed of by the Hon’ble High Court per judgment dated October 19, 2013. The findings recorded by this Court on the issue of delay and laches in making the reference were set aside by the Hon’ble High Court. The matter was remitted to this Court for answering the said issue on its own merits, in accordance with law.

4. After the receipt of the file by way of remand from the Hon’ble High Court of Himachal Pradesh, the parties did not lead any oral or documentary evidence.

5. I have heard the ld. counsel/AR for the parties and have gone through the case file once again.

6. For the reasons detailed here under, my findings on the issue No.7 relating to the delay and laches are as under:-

Issue No. 7 : No

Issue No. 8 : Claim petition allowed in part vide operative portion of the Award.

#### REASONS FOR FINDINGS

#### ISSUE No. 7

7. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been

made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

8. In Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota versus Mohan Lal, Civil Appeal No. 6795 of 2013, decided on 16th August, 2013, by the Hon'ble Supreme Court of India, the issue regarding delay in raising the industrial dispute by the workman was discussed. Paras 19 and 20 of the judgment read thus:-

- “19. In a subsequent decision in Balbir Singh, this Court observed that Ajaib Singh was confined to the facts and circumstances of that case. It is true that in Balbir Singh, the plea of delay was raised before the Industrial Tribunal but we would emphasize the passage from Balbir Singh where it was said: “Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially.
- 20. We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the I.D. Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed.”

9. In Mohan Lal's case (cited supra), the workman/petitioner worked as a work-charged employee for 286 days. The industrial dispute was raised by him after six years of the termination. The Hon'ble Apex Court opined that the interest of justice will be sub-served if in lieu of reinstatement, the compensation of Rs.1,00,000/- (one lac) is paid to the workman by the employer.

10. Now comes the question as to what relief should be granted/awarded to the claimant/petitioner?

The date of the impugned termination is 25.5.1999. Such termination has been held to be bad in the eyes of law in view of the provisions contained in Sections 25-G and 25-H of the Act.

11. The mandays charts produced by the respondent are not in dispute. Their perusal discloses that the petitioner served the respondent/Board firstly from 25.12.1997 to 24.1.1998 for 24 days. In the second spell, the petitioner served the respondent/Board from 05.2.1999 to 24.5.1999 for 77 days. This shows that the petitioner worked under the respondent for total 101 days from the month of December, 1997 to May, 1999. The assertion of the petitioner that artificial breaks in service were given to him by the respondent during the course of the employment cannot be gone into by this Court being beyond the terms of the reference as per the mandate of Section 10(4) of the Act.

12. There is nothing on the record to show as to when the demand notice under Section 2-A of the Act was served upon the respondent by the petitioner. The copy of the demand notice has not been placed/exhibited on the file. From the reference/notification issued by the appropriate Govt. in the month of March, 2011, it can be gathered that the Conciliation Officer-cum-Labour Officer, Mandi, had forwarded his report dated 12.3.2007 to the Labour Commissioner, Himachal Pradesh (appropriate Govt.). There is no cogent and convincing evidence on the file to establish that the petitioner/workman raised the industrial dispute within a reasonable time from the date of the termination in question or he kept the dispute alive from the very beginning.

13. While testifying in the Court as PW1, the petitioner has given his age as 42 years. It is common knowledge that a young man like the petitioner will not sit at home during the period he is/was out of the job. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

14. To my thinking, keeping in view all the relevant factors including the mode and manner of the appointment of the petitioner, nature of the employment and the length of service etc., the petitioner is not entitled to the reinstatement of his services particularly when he served the respondent/Board for only 101 days from the month of December, 1997 to May, 1999 and that too intermittently. In none of the calendar year of his engagement, the petitioner completed 240 days or more of work.

15. Taking into consideration the trite laid down in Mohan Lal's case (cited supra) and all other relevant factors narrated above, I feel that it will be just and expedient if the respondent/employer is directed to pay a sum of Rs.10,000/- (ten thousand only) to the petitioner as compensation in lieu of the reinstatement of his services and other consequential benefits.

16. This issue is decided in favour of the petitioner and against the respondent.

#### RELIEF (ISSUE NO. 8)

17. Keeping in mind my findings on the various issues (including issue No.7 decided afresh today), the relief clause is required to be modified by way of necessary implication. Now para No.25 of the Award will read thus:

“As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the services of the petitioner by the respondent w.e.f. 25.5.1999 is set aside and quashed. The respondent is directed to pay the compensation of Rs.10,000/- (ten thousand only) to the petitioner in lieu of the reinstatement of his services as well as the other consequential benefits, if any. Such amount will be paid by the respondent to the petitioner or deposited in this Court within a period of 60 days from today failing which he (respondent) will be liable to pay the interest @ 9% per annum on the said amount from the date of the institution of this reference i.e. 31.03.2011 till the date of payment/deposit. Parties to bear their own costs”.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File after due completion be consigned to the Record Room.

Announced in the open Court today this 18th day of December, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 82/2012

Shri Inder Singh v/s The Executive Engineer, HPSEB, Electrical Division, Mandi, Distt. Mandi, H.P.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. J.S. Chauhan, Adv.

For the Respondent : Sh. Abhishek Lakhpal, Adv.

**AWARD**

The above numbered reference was disposed of by this Court per Award dated 15.03.2013. On the pleadings of the parties as many as seven issues were framed by the Court. Issue No.6 related to the limitation, whereas, issue No.7 pertained to the relief. Such issues read thus:

Issue No. 6: Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR.

Issue No.7: Relief.

2. Issue No.6 was decided in favour of the workman/petitioner besides the other issues. Accordingly, the claim petition was allowed by this Court vide Award dated 15.03.2013. Issue No.7 regarding the relief granted to the petitioner per Award dated 15.03.2013 is reproduced below verbatim for ready reference:

“31. As a sequel to my findings on the various issues above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date/month of his illegal termination i.e. April, 2000 except back wages. Parties to bear their own costs”.

3. Against the Award dated 15.03.2013, the respondent viz. the Senior Executive Engineer preferred CWP No.4199 of 2013 before the Hon’ble High Court of Himachal Pradesh. Such Civil Writ Petition along-with seven connected matters was disposed of by the Hon’ble High Court per judgment dated October 19, 2013. The findings recorded by this Court on the issue of delay and laches in making the reference were set aside by the Hon’ble High Court. The matter was remitted to this Court for answering the said issue on its own merits, in accordance with law.

4. After the receipt of the file by way of remand from the Hon’ble High Court of Himachal Pradesh, the parties placed a few documents on the record. Some of the documents were

requisitioned from the office of the Labour Officer cum-Conciliation Officer, Mandi, for doing the substantial justice.

5. I have heard the ld. counsel/AR for the parties and have gone through the case file once again.

6. For the reasons detailed here under, my findings on the issue No. 6 relating to the delay and laches are as under:-

Issue No. 6 : No

Issue No.7 : Claim petition allowed in part vide operative portion of the Award.

## REASONS FOR FINDINGS

### ISSUE No. 6

7. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

8. In Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota versus Mohan Lal, Civil Appeal No. 6795 of 2013, decided on 16th August, 2013, by the Hon'ble Supreme Court of India, the issue regarding delay in raising the industrial dispute by the workman was discussed. Paras 19 and 20 of the judgment read thus:-

- “19. In a subsequent decision in Balbir Singh, this Court observed that Ajaib Singh was confined to the facts and circumstances of that case. It is true that in Balbir Singh, the plea of delay was raised before the Industrial Tribunal but we would emphasize the passage from Balbir Singh where it was said: “Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially.
- 20. We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the I.D. Act but delay in raising industrial dispute is

definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed.”

9. In Mohan Lal's case (cited supra), the workman/petitioner worked as a work-charged employee for 286 days. The industrial dispute was raised by him after six years of the termination. The Hon'ble Apex Court opined that the interest of justice will be sub-served if in lieu of reinstatement, the compensation of Rs.1,00,000/- (one lac) is paid to the workman by the employer.

10. Now comes the question as to what relief should be granted/awarded to the claimant/petitioner? The date/month of the impugned termination is April, 2000. Such termination has been held to be bad in the eyes of law in view of the provisions contained in Section 25-G of the Act.

11. The mandays chart Ex. PW1/C is not in dispute. Its perusal discloses that the petitioner served the respondent/Board intermittently from 25.09.1997 to 24.4.2000 for 344 days in all. The assertion of the petitioner that artificial breaks in service were given to him by the respondent during the course of the employment cannot be gone into by this Court being beyond the terms of the reference as per the mandate of Section 10(4) of the Act.

12. The documents, which are there on the record, go to show that after the termination in question, the petitioner instituted O.A. (M) No. 270 of 2001 before the erstwhile Hon'ble Administrative Tribunal for the redressal of his grievances. Such Original Application was disposed of by the Hon'ble Administrative Tribunal per order dated 20.7.2004, the copy of which is Ex. PW1/B. While deciding the Original Application, it was observed by the Hon'ble Administrative Tribunal that it has no jurisdiction to deal with the same (OA). The applicant/petitioner was afforded the liberty to approach the appropriate Court/Forum.

13. After the disposal of the Original Application No. 270 of 2001, the petitioner Shri Inder Singh served a demand notice dated 04.8.2004 upon the respondent. Conciliation proceedings were initiated by the Labour Officer-cum-Conciliation Officer, Mandi. Failure report under Section 12(4) of the Act was forwarded by the Labour Officer-cum-Conciliation Officer, Mandi to the appropriate Govt. viz. Labour Commissioner, Himachal Pradesh. After going through the report and other documents, the Labour Commissioner, Himachal Pradesh formed an opinion that there is no justification in making the reference to the Labour Court. By taking recourse to the provisions of Section 12 (5) of the Act, the Labour Commissioner, Himachal Pradesh, informed the petitioner per letter dated 22.8.2006 that his dispute is not being referred to the Labour Court for adjudication. In the letter dated 22.8.2006, the name of the respondent/employer was wrongly mentioned which was rectified by issuing the corrigendum in the month of October, 2006. The copy of the corrigendum was also sent to the petitioner/workman by the Labour Commissioner. When the petitioner became aware of the fact that the Labour Commissioner has refused to refer the dispute for adjudication to the Labour Court, he (petitioner) moved an application dated 07.9.2006 before the Labour Inspector/Officer, Mandi. In the said application, he (petitioner) clearly mentioned that vide order dated 22.8.2006, the Labour Commissioner has dismissed the reference. He wants to file a writ petition before the Hon'ble High Court against the decision of the Labour Commissioner for which attested/certified copies of the demand notice etc. be supplied to him.

14. Despite moving the application dated 07.9.2006 and aware of the refusal order of the Labour Commissioner, the petitioner/workman kept on writing various letters in the year 2008 to

the Labour Commissioner for sending the industrial dispute raised by him to the Labour Court for decision. Vide despatch dated 10th December, 2008, the copy of the corrigendum issued by the Labour Commissioner was sent by him to this Court. On the receipt of the corrigendum, a letter dated 21.3.2009 was written by this office/Court to the Labour Commissioner intimating him that the original reference has not been received in this Court. Reply dated 12th August, 2009 was received from the Labour Commissioner to the letter dated 21.3.2009 of this Court/office. In the reply, the Labour Commissioner (appropriate Govt.) clearly mentioned that the corrigendum dated 10.12.2008 was issued/sent in respect of the letter dated 22.8.2006 vide which the parties to the dispute were informed about not referring their dispute to the Labour Court for adjudication. The reference under Section 10(1) of the Act was never made. The record also shows that a letter dated 14th October, 2009 was written by the Labour Commissioner to the petitioner, who had moved an application for review of the refusal order dated 22.8.2006.

15. By concealing all the above noted facts (except the filing of the O.A.), a fresh demand notice dated 18/19 May, 2010 was served upon the respondent by the petitioner. Conciliation proceedings were once again initiated by the Labour Officer, Mandi. The respondent/Board appeared before the Conciliation Officer and filed the reply to the demand notice. Strangely, the respondent/Board also kept mum regarding the earlier demand notice dated 04.8.2004 as well as the refusal order dated 22.8.2006 passed by the Labour Commissioner and the corrigendum issued to the said order. In the reply, the respondent simply pleaded that the demand notice has been issued by the petitioner after more than six years from the date of the order of the Hon'ble Administrative Tribunal i.e. 20.7.2004. Rejoinder to the reply of the respondent/Board was filed by the petitioner/workman before the Conciliation Officer. In the rejoinder, the petitioner suppressed the material facts regarding the refusal order dated 22.8.2006 passed by the Labour Commissioner and the application dated 07.9.2006 preferred by him. Instead, he took a totally false plea that due to the clerical error, the office of the Labour Commissioner had directed him to submit a fresh claim petition. Be it stated that the clerical mistake (as alleged) was rectified by the Labour Commissioner by issuing the corrigendum way back in the month of October, 2006.

16. On the basis of the fresh demand notice served by the petitioner, the Labour Officer-cum-Conciliation Officer, Mandi again submitted his failure report dated 01.2.2011 under Section 12(4) of the Act to the Labour Commissioner (appropriate Govt.). Notification/reference in hand was issued by the Labour Commissioner on 8th December, 2011 on the basis of the second failure report dated 01.2.2011.

17. In his proof affidavit Ex. PW1/A, the petitioner/claimant did not whisper a single word regarding the first demand notice dated 04.8.2004 and the refusal order dated 22.8.2006. Rather, a false assertion has been made that the matter remained pending in the office of the Labour Commissioner from 30.3.2005 i.e. the date on which the first failure report was sent by the Conciliation Officer, Mandi to the Labour Commissioner up-to the date of the issuance of the instant reference/notification. Infact, an attempt has been made by the petitioner to explain the delay, if any, in raising the industrial dispute by putting the blame on the office of the Labour Commissioner.

18. While testifying in the Court as PW1, the petitioner has given his age as 38 years. It is common knowledge that a young man like the petitioner will not sit at home during the period he is/was out of the job. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

19. To my thinking, keeping in view all the relevant factors including the mode and manner of the appointment of the petitioner, nature of the employment, length of service as well as his act and conduct, he (petitioner) is not entitled to the reinstatement of his services particularly

when he served the respondent/Board for only 344 days from the month of September, 1997 to April, 2000 and that too intermittently. In none of the calendar year of his engagement, the petitioner completed 240 days or more of work. His request for referring the industrial dispute to the Labour Court was earlier declined by the Labour Commissioner (appropriate Govt.). The present reference/notification is actually an outcome of the false assertions made by the petitioner and the suppression of the true/material facts by him.

20. Taking into consideration the trite laid down in Mohan Lal's case (cited supra) and all other relevant factors narrated above, I feel that it will be just and expedient if the respondent/employer is directed to engage the petitioner as a fresh hand (in preference to the others) as and when the need arises in lieu of the reinstatement of his services and other consequential benefits.

21. This issue is decided in favour of the petitioner and against the respondent.

#### RELIEF (ISSUE NO.7)

22. Keeping in mind my findings on the various issues (including issue No.6 decided afresh today), the relief clause is required to be modified by way of necessary implication. Now para No.31 of the Award will read thus:

“As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the services of the petitioner by the respondent in the month of April, 2000 is set aside and quashed. The respondent is directed to engage the petitioner as a fresh hand as and when the need arises (in preference to the others). Parties to bear their own costs”.

23. Before parting with the matter, I will like to add that I am refraining myself from proceeding against the petitioner for committing the perjury. He is, however, saddled with Rs.25,000/- (Twenty five thousand only) as costs for telling the lies and concealing the true/material facts.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 26th day of December, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 260/2012  
Date of Institution : 15.06.2012  
Date of Decision : 02.12.2013

Shri Pawan Kumar s/o Shri Partap Singh, r/o Village and P.O. Manuhata, Tehsil Bhatiyat, District Chamba, H.P. . . Petitioner.

*Versus*

The Divisional Forest Officer, Forest Division, Dalhousie, District Chamba, H.P. . . Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947. For the*

Petitioner : Sh. Aman Guleria, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Pawan Kumar S/O Shri Partap Singh, R/O Village and P.O. Manuhata, Tehsil Bhatiyat, District Chamba, H.P. by the Divisional Forest Officer, Forest Division, Dalhousie, District Chamba, H.P. from time to time year, 1999 to 2007 and finally w.e.f. June, 2008 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, past service benefits, seniority and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged nursery chowkidar-cum-beldar by the respondent in the month of January, 1999. He continuously worked as such up-to the year 2009 in Manuhta Nursery, Chowari Forest Range, as well as completed 240 days of work in each and every calendar year of his employment. In the year 2009, his services were terminated by the respondent without assigning any reason. Before the disengagement of his services, neither any notice was given to him nor the wages in lieu of the notice period and the retrenchment compensation were paid. At the time of his termination, the persons junior to him were retained in service by the respondent. The latter failed to abide by the principle of ‘last come first go’. Not only this, after the retrenchment of his services new/fresh hands have been engaged by the respondent. He was not given an opportunity of re-employment. He (petitioner) never remained absent from his duties. He did not work for the period the work was not provided to him by the respondent/department. The persons junior to him served the respondent continuously. Their services have also been regularized under the eight years regularization policy of the State Government. If artificial breaks in service would not have been given to him and his services would not have been terminated unlawfully, he must have been regularized along-with his juniors or w.e.f. 01.1.2007 as he (petitioner) completed eight years continuous service with 240 days in each calendar year up-to 31.12.2006. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short). He (petitioner) has been rendered helpless by the respondent/department after taking the services during the prime of his youth. From the date of his termination, he is unemployed. He and his family are facing starvation. He also suffered mental agony at the hands of the respondent.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

"the petitioner may kindly be ordered to be re-instated w.e.f. the date of his illegal and arbitrary retrenchment/termination along with full back wages and continuity of service and frictional breaks given to him from time to time be taken in to account for the purpose of continuity of services for the reasons as stated in the aforesaid paras, in the interest of justice as the action of the department is illegal and un-justified. It is further prayed that the services of the applicant be regularized retrospectively w.e.f. 1/1/2007 or from such date from which date the services of his junior workman have been regularized in the interest of justice.

(II) Any other relief as the Hon'ble court may deem fit".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The claimant/petitioner has no cause of action. He is estopped from filing the claim petition by his act and conduct. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, it has been owned that the relationship of employer and employee (workman) exists between the parties. However, it has been denied that the services of the petitioner were engaged in the month of January, 1999. Actually, the petitioner was initially appointed as a daily waged beldar in the month of February, 1999. Forestry works are of seasonal nature depending upon the availability of the work and the budget. Neither intentional breaks in service were provided to the petitioner at any point of time nor his services were finally disengaged in the year 2009 as alleged. The petitioner was in the habit of absenting from his duty without any intimation to him (respondent). After working till the month of June, 2008, the petitioner voluntarily left the job. Thereafter, he never reported for duty. No person junior to the petitioner has been retained in service. No new/fresh hands have been appointed. Since the petitioner willfully left the job, he is debarred from claiming parity with the workmen who worked in continuity. He is not entitled to any protection under the Act. The instant industrial dispute has been raised by the petitioner at a belated stage. The same has become stale. The petitioner is gainfully employed as an agriculturist. No provision of the Act has been flouted. The petition is devoid of any merit.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. No rejoinder has been filed by the petitioner.

5. Per order dated 15.12.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent from time to time during the year 1999 to 2007 and finally w.e.f. the month of June, 2008 is illegal and unjustified as alleged? ..OPP.
2. Whether the petitioner has a cause of action? OPP
3. Whether the petition is not maintainable in the present form? ..OPR.
4. Whether the petition is hit by the vice of delay and laches on the part of the petitioner as alleged. If so, its effect? ..OPR.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? ..OPR.

## 6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No

Issue No.2 : No

Issue No.3 : Yes

Issue No.4 : No

Issue No.5 : Not pressed

Relief. : Claim petition dismissed vide operative portion of the Award.

## REASONS FOR FINDINGS

## ISSUE NO.1

8. The petitioner Shri Pawan Kumar stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also stated that the services of the persons junior to him namely S/Sh. Prem Chand and Tilak Raj have already been regularized by the respondent. S/Shri Kasturi Lal and Tilu were appointed by the respondent after the disengagement of his services.

In the cross-examination, he denied that he had joined the service in the month of February, 1999. He has not produced any document to show that he was initially employed by the respondent in the month of January, 1999. He denied that at the time of his engagement, it was conveyed to him that he has been employed for carrying out the seasonal forestry works and the work for the whole year cannot be provided to him. He also denied that he used to remain absent from his duties and after June, 2008, he abandoned the job. He refuted that he did not complete 240 days of work in any calendar year of his employment. He admitted that he earns his livelihood by doing the work of agriculture. He denied that he has instituted a phoney petition.

9. Conversely, Shri R.C. Goma, Divisional Forest Officer, Dalhousie (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that after the termination of the services of the petitioner, Shri Tilu Ram was appointed. When the petitioner left the job, no notice was given to him asking him to resume the duty. Even no departmental proceedings were initiated against the petitioner. He denied that the services of the petitioner were terminated in a wrongful manner.

10. Ex. PW1/B is the copy of the demand notice served upon the respondent by the petitioner under Section 2-A of the Act.11. Ex. RW1/B is the detail of the mandays relating to Shri Tilak Raj and four others.

12. Ex. RW1/C is the copy of the Award dated 24.4.2012 passed by this Court in Reference No.667/2008 titled as Shri Kasturi Lal vs. The Divisional Forest Officer, Forest Division, Dalhousie, Distt. Chamba.

13. Ex. RW1/D is the seniority list/mandays chart pertaining to Shri Desh Raj and ors.

14. Exts. RW1/E, RA and PA are the mandays charts in respect of the petitioner.

15. Ex. RW1/F is the list of contingent paid workers, who served the respondent/department up-to 31.12.1997 with 240 days of continuous service in each and every calendar year.

16. Ex. RW1/G is the letter dated 13.6.2013 written by the Range Forest Officer, Chowari. It reveals that Shri Tilu never served in Chowari Range (as alleged by the petitioner).

17. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily waged beldar. The petitioner has maintained that he was employed in the month of January, 1999. The respondent has pleaded that the services of the petitioner were initially engaged in the month of February, 1999. The petitioner has failed to produce any documentary evidence to show that his services were initially engaged by the respondent in the month of January, 1999 as claimed. Rather, the mandays charts Exts. RW1/E and RA make it crystal clear that the petitioner was initially employed on 1st February, 1999.

18. The respondent has not placed/exhibited on the file any document evidencing that the services of the petitioner were engaged for carrying out the seasonal forestry works only to his knowledge. The mandays chart Ex. RA clarifies that in the year 2001, work for 245 days was provided to the petitioner by the respondent. Of course, the petitioner served the respondent for less than 240 days. A person who is given the work for more than 240 days in a calendar year cannot be termed as a seasonal worker by any stretch of imagination.

19. The petitioner has maintained that from the year 1999 i.e. date/month of his initial appointment to the year 2007, artificial/fictional breaks in service were provided to him by the respondent unlawfully. The said fact has been denied by the latter. The mandays chart Ex. RA depicts that the petitioner used to remain absent from his duties. He did not work for the days the muster rolls were issued in his name by the respondent/department. As already mentioned in the year 2001 i.e. from 01.3.2001 to 31.12.2001, the work for 245 days was provided to the petitioner by the respondent. However, he served the respondent/department for only 222 days. In the year 2005, the petitioner did not serve the respondent/department even for a single day. If intentional breaks were being provided to the petitioner by the respondent, then why he (petitioner) did not agitate the said fact earlier or at the time of the receipt of the money for the working days actually put in by him? The reasons to that effect being obscure are nocuous to his cause. The petitioner cannot be permitted to take the advantage of his own wrongs, particularly when he did not serve the respondent for a single day in the year 2005 as well as remained tight lipped and complacent about his rights for more than eight years. Taking into consideration these facts, to my mind, it can be easily said that no artificial/fictional breaks in service were given to the petitioner by the respondent from the date/month of his initial appointment to the year 2007.

20. Now comes the question as to whether the services of the petitioner were finally terminated by the respondent in the month of June, 2008 wrongly and illegally or not?

The petitioner has contended that he served the respondent/department up-to the year 2009. In the said year his services were dispensed with by the respondent arbitrarily and illegally. While denying the said fact, the respondent has pleaded that the petitioner worked only up-to the month of June, 2008 and, thereafter, left the job of his own accord and free volition.

21. The mandays charts Exts. RW1/E, PA and RA make it abundantly clear that the petitioner worked with the respondent only up-to 30th June, 2008. In the month of June, 2008, he served the respondent/department for 290 days despite the fact that the muster roll for 30 days was issued in his name.

22. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fail to report for duty, it cannot be presumed that

he has left/abandoned the job. It is there in the statement of the respondent (RW1) that no notice was served upon the petitioner calling upon him to resume the duties after he allegedly left the same. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established. The mandays charts relating to the petitioner clarify that he did not complete 240 days of work in a block of 12 calendar months anterior to the date/month of the termination of his services i.e. June, 2008 as envisaged under Section 25-B of the Act. The provisions of Section 25-F of the Act are thus not attracted in this case.

23. In his proof affidavit Ex. PW1/A, the petitioner has mentioned that S/Shri Prem Chand, Tilak Raj, Yogesh, Vratiya, and Garv Singh are junior to him, whose services have already been regularized by the respondent. Exts. RW1/B and D unfold that Shri Tilak Raj etc. were appointed by the respondent prior to the engagement of the services of the petitioner. They are senior to him.

24. In para 3 of the proof affidavit Ex. PW1/A, it has been highlighted that after the termination of the services of the petitioner S/Shri Kasturi Lal and Tili were appointed by the respondent. Ex. RW1/C i.e. copy of the Award dated 24.4.2012 pronounced by this Court in Reference No.667/2008 titled as Kasturi Lal vs. The Divisional Forest Officer, Forest Division, Dalhousie goes to show that the services of Shri Kasturi Lal were engaged by the respondent in the month of January, 1987 i.e. much before the appointment of the petitioner. So far as Shri Tili Ram is concerned, Range Forest Officer, Chowari has reported in writing per letter Ex. RW1/G that no such person was ever employed or served under him after the petitioner left the job.

25. It is often said and rightly too that the men may tell lies but the documents do not. It is trite that the documentary evidence as compared to the oral evidence has to be given weight. The petitioner has failed to lead any cogent and convincing evidence (including the documentary evidence) to prove that any person junior to him is serving the respondent/department or after the termination of his services, new/fresh hands have been engaged by the respondent. That being so, it cannot be said that the provisions of Sections 25-G and 25-H of the Act have been contravened by the respondent.

26. Such being the situation, I have no hesitation to conclude that neither artificial/fictional breaks in service were provided to the petitioner by the respondent nor the services of the former have been disengaged by the latter in derogation of the provisions of the Act. It appears to me that the avarice of the petitioner to grab the Government job and money has forced him to prefer a totally false and baseless claim. He is not entitled to any relief.

27. This issue is decided against the petitioner and in favour of his adversary.

#### ISSUES NO. 2 AND 3

28. Keeping in view my findings on issue No.1 above, it is held that the petitioner has no cause of action. The claim petition is not maintainable in the present form.

29. These issues are also decided against the petitioner.

#### ISSUE NO. 4

30. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed

to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

31. This issue is decided in favour of the petitioner and against the respondent.

#### ISSUE NO. 5

32. Not pressed.

#### RELIEF (ISSUE NO. 6)

33. As a sequel to my findings on the issues No.1 to 3, the present claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed with costs quantified as Rs.3,000/- (Three thousand only).

34. The reference is answered in the aforesaid terms.

35. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

36. File after due completion be consigned to the Record Room.

Announced in the open Court today this 2nd day of December, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

#### IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 13/2013  
Date of Institution : 18.2.2013  
Date of Decision : 16.12.2013

Shri Pradeep Kumar s/o Shri Bhoop Singh, r/o Village & P.O. Lanjata, Tehsil Ghumarwin,  
Distt. Bilaspur, H.P. ....Petitioner.

*Versus*

The Executive Engineer, HPPWD Division, Ghumarwin, Distt. Bilaspur, H.P.

*..Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Rahul Gupta, Adv.

For the Respondent : Sh. Soham Kaushal, ADA

## AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Pradeep Kumar S/O Sh. Bhoop Singh, R/O Village & PO Lanjata, Tehsil Ghumarwin, Distt. Bilaspur, by The Executive Engineer, HPPWD Division Ghumarwin, Distt. Bilaspur, H.P. w.e.f. 01.6.1998, as alleged by the workman without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged works inspector by the respondent/department on 1st January, 1998. He worked as such up-to 31.5.1998. On the next day i.e. 01.6.1998, his services were terminated by the respondent by an oral order. Before the disengagement of his services, no notice was given to him. During the period of his employment, he discharged his duties honestly and to the satisfaction of his superiors. Nothing adverse was ever conveyed to him. At the time of his termination, the persons junior to him namely S/Sh. Tilak Raj and Vidya Sagar etc. were retained in service by the respondent. The latter failed to abide by the principle of ‘last come first go’. Had the respondent allowed him (petitioner) to work till the month of August, 1998, he would have completed 240 days of work in a calendar year. The respondent adopted the method of pick and choose. Similarly situated workmen are still working with the respondent/department against the policy of the State. He (petitioner) was also not given an opportunity of re-employment by the respondent. He preferred Original Application No.1158/1998 before the erstwhile Hon’ble Himachal Pradesh Administrative Tribunal for the redressal of his grievances. Such Original Application was disposed of by the Hon’ble Administrative Tribunal on 23.2.2005. He was given the liberty to avail the remedy before the appropriate Court/Forum under the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short). Thereafter, he approached the Labour Officer in accordance with law. Per letter dated –March, 2010, the appropriate Government (Labour Commissioner) did not refer the dispute to the Labour Court. He (petitioner) again approached the Labour Commissioner, Himachal Pradesh vide application dated 13.12.2011 to refer the dispute to this Court. Accordingly, the notification/reference was issued by the appropriate Government. There is/was no delay on his part. The act and conduct of the respondent is illegal and unjustified. It is also violative of the provisions of Sections 25-G and 25-H of the Act.

As such, he (petitioner) prays that the termination order dated 01.6.1998 be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the

effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petitioner has no cause of action. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on 1st January, 1998 and he worked as such up-to 31<sup>st</sup> May, 1998. However, it has been pleaded that the petitioner managed to get himself engaged as a works inspector fraudulently on different muster rolls through his father Shri Bhoop Singh, who was working as a Senior Assistant in HPPWD Sub Division Ghumarwin. When the muster rolls were issued in the name of the petitioner contrary to the R&P Rules (Recruitment and Promotion Rules) his father Shri Bhoop Singh was the Senior Assistant. The services of the petitioner were engaged purely on temporary basis under Employment Assurance Scheme (EAS) against Deputy Commissioner Deposit works and funds. Since the petitioner was a temporary employee, his services were terminated due to the shortage of the funds. He did not complete 240 days of work. Under 8th Five Year Plan, EAS was implemented in Bilaspur District through District Collector, Bilaspur. The policy guidelines of the EAS are annexure R2. At the relevant time, 50 lakhs deposit work of the Telecommunication Department was with him (respondent). Fiber cable lines were to be laid. With the utilization of the deposit funds received from the different departments, his (respondent's) office had no option, but to terminate the services of the petitioner who was employed for undertaking the temporary works only. The workmen namely Shri Tilak Raj etc. whose names have been disclosed by the petitioner are senior to him. They were employed as daily paid beldars and were promoted to the posts of works inspector on account of their seniority in the cadre of beldars or for having special qualification. S/Shri Anil Kumar and Balmukand are qualified diploma engineers. The petitioner is only a matriculate. Some of the workmen whose names have been mentioned by the petitioner in para 6 of the claim petition were initially engaged in other Divisions. They have joined his (respondent's) office on transfer. No person junior to the petitioner has been retained in service or engaged/re-engaged as works inspector after the termination of his services. No provision of the Act has been flouted. The instant industrial dispute was raised by the petitioner at a belated stage per demand notice dated 03.6.2008. It stands admitted that the Original Application No. 1158/1998 preferred by the petitioner before the Hon'ble Administrative Tribunal was decided on 23.2.2005. The petitioner did not approach the appropriate Court/Forum immediately after the disposal of the Original Application by the Hon'ble Administrative Tribunal. He (petitioner) is gainfully employed. Presently, he is working in a private company. The petition is meritless. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that no action for the alleged fraud was ever taken against him. The muster rolls issued in his name were for the repair and maintenance of the various roads as well as buildings under Ghumarwin Sub Division. His services were not engaged on temporary basis in any scheme/project or deposit work. The defence taken by the respondent in the reply is new one. The said defence was never taken before the Hon'ble Administrative Tribunal. He (petitioner) was never associated with the laying of fiber cable lines. Juniors to him are still serving the respondent/department. Some of the persons, whose names have been divulged by him, were engaged as works inspectors by the respondent. They were subsequently demoted as beldar(s).

5. Per order dated 15.07.2013, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent w.e.f.01-06-1998 is illegal and unjustified as alleged? ..OPP.

2. Whether the petitioner has a cause of action? ..OPP.
3. Whether the claim petition is not maintainable in the present form? ..OPR.
4. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-
- Issue No.1 : No  
 Issue No.2 : No  
 Issue No.3 : Yes  
 Issue No.4 : No Relief. : Claim petition dismissed vide operative portion of the Award.

#### REASONS FOR FINDINGS

##### ISSUES NO. 1 TO 3

8. Being interlinked and to avoid the repetition, all these issues are taken up together for discussion and disposal.

9. The petitioner Shri Pradeep Kumar stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that his services were engaged directly as a works inspector which is class-III post. He does not know that as per the Rules only a beldar on promotion can be appointed as a works inspector and for direct employment as works inspector a competitive examination is held by the Subordinate Services Selection Board or the departmental committee. He denied that in the year, 1998, Employment Assurance Scheme (EAS) was implemented in Ghumarwin. He also denied that the BSNL authorities had deposited approximately Rs.50 lakhs with the respondents for the repair/maintenance of the roads as the telephone cables were to be laid. He admitted that in the year 1998, his father (Shri Bhoop Singh) was posted as a Senior Assistant in HPPWD Sub Division, Ghumarwin. Shri Bhoop Singh was holding the seat dealing with the issuance of the muster rolls. He denied that his father issued the muster rolls of works inspector only in his favour by throwing all the norms to the winds and burking the Rules. Exs. R1 to R5 i.e. the copies of the muster rolls bear his signatures as a token of the receipt of the payment. He feigned ignorance about the fact that after the lapse of five months when it came to the notice of the respondent/department that wrong muster rolls are being issued in his name, the issuance of the muster rolls in his favour was stopped. In the month of June, 1998, when the muster roll of works inspector was not issued in his name, his father was not posted in HPPWD Sub Division, Ghumarwin. He denied that the departmental proceedings were initiated against his father for issuing the muster rolls in a wrongful manner. He does not know that under the EAS, 573 daily waged beldars were employed by the respondent and on the completion of the scheme, the services of all the daily waged beldars were disengaged. He is not aware of the fact that S/Shri Gian Chand and Tilak Raj were earlier appointed as beldars and due to their special qualifications, they were promoted as works inspectors under the Rules. He denied that he secured the job in an unlawful manner. He also denied that to gain the employment and derive other undue benefits, he has

instituted a phoney petition. He does not know as to whether the budget under EAS is presently available or not.

10. Conversely, Shri Parkash Chand, Executive Engineer, HPPWD Division Ghumarwin (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the muster rolls for repair and maintenance of various buildings as well as roads were issued in the name of the petitioner. Competent authority can transfer a beldar from one Division to the other. If a person has been wrongly promoted, he can be demoted by the authorities. He denied that at the time of the termination of the services of the petitioner, the persons junior to him were retained in service. He also denied that after the disengagement of the services of the petitioner, new/fresh works inspectors were appointed.

11. Ex. RW1/B is the detail of the working days relating to the petitioner. It depicts that the petitioner served the respondent/department from January, 1998 to May, 1998 for 148 days only.

12. Ex. RW1/C is the copy of the outlines and objectives pertaining to the EAS.

13. Ex. RW1/D is the copy of an office order dated 17.3.1997 issued by Deputy Commissioner, Bilaspur. It unfolds that the funds under EAS were allocated by the Deputy Commissioner (implementing authority) in favour of the respondent viz. implementing agency.

14. Ex. RW1/E is the copy of a letter dated 24.1.1998 written by the Superintending Engineer, HPPWD, Bilaspur to the respondent. It depicts that Shri Tilak Raj, daily waged works inspector working under HPPWD, Bilaspur Division No.2 was ordered to be temporarily adjusted in Ghumarwin Division of the HPPWD.

15. Ex. RW1/F is the seniority list/working days details with respect to Shri Tilak Raj.

16. Ex. RW1/G is the copy of an office order dated 31.7.2008 issued by Superintending Engineer, HPPWD, Bilaspur. It reveals that Shri Vidya Sagar works inspector (daily wager) working in Naina Deviji Sub Division was transferred to the office of the respondent.

17. Exs. RW1/H to L are the details of the working days relating to S/Shri Vidya Sagar, Gian Chand, Anil Kumar, Balmukand and Satish Kumar, respectively.

18. Ex. RW1/M is the copy of R&P Rules 2008 notified by the Government of Himachal Pradesh with regard to the works inspectors (class-II non gazetted) in the HPPWD.

19. Ex. RW1/N is the copy of the demand notice dated 03.6.2008 served upon the respondent by the petitioner under Section 2-A of the Act.

20. Ex. RW1/O is the copy of the order dated 23.2.2005 pronounced by the Hon'ble Administrative Tribunal in O.A. No.1158/1998 titled as Shri Pradeep Kumar versus State of Himachal Pradesh through Secretary (PWD) to the Government of Himachal Pradesh and another.

21. Ex. RW1/P is the copy of a notification dated 5th May, 1995 issued by the Public Works Department, Government of Himachal Pradesh. It deals with the recruitment and promotion rules pertaining to different categories including the works inspector.

22. Ex. RW1/Q is the copy of a letter dated 27.7.1998 written by the respondent to the Assistant Engineer, HPPWD Sub Division Ghumarwin. Vide this letter, the clarification/explanation was sought from the Assistant Engineer by the Executive Engineer (respondent) to the effect as to whether before the engagement of the services of Shri Pradeep Kumar (petitioner), the permission/sanction from the higher authorities was obtained or not.

23. Ex. PX is the copy of the reply submitted by the respondents before the Hon'ble Administrative Tribunal in O.A. NO.1158/1998.

24. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on 1st January, 1998 and he worked as such up-to 31st May, 1998. The said fact finds support from the mandays chart Ex. RW1/B. In the reply, the respondent has nowhere pleaded that the workman/petitioner was put to notice that his employment is/was in a project (EAS) and the period of the engagement is/was coterminous with the project. Not only this, the respondent has nowhere pleaded that the workman/petitioner was made aware of the fact that he has been employed for undertaking the works against the deposit of money made by the other departments. The respondent (RW1) has also not uttered a single word to the effect that at the time of the appointment of the petitioner, he was duly informed that his services have been engaged in a project/scheme and they will come to an end on the closure of the project/scheme or exhaustion of the funds. It is the admitted case of the respondent that the services of the petitioner were disengaged on 1st June, 1998 due to the non availability of the funds.

25. The first and foremost thing which requires thrashing at the hands of this Court is as to whether the services of the petitioner could be engaged directly as a works inspector by the respondent? Exs. R1 to R5 are the copies of the muster rolls. They clarify that the muster rolls of works inspector were issued in the name of the petitioner only. Of course, as per the muster rolls, the services of the petitioner were engaged for annual repair and maintenance of the various roads/buildings in HPPWD Sub Division, Ghumarwin. 25A. There is no denial of the fact that when the services of the petitioner were engaged as a works inspector, his father Shri Bhoop Singh was posted as a Senior Assistant in HPPWD Sub Division Ghumarwin. Shri Bhoop Singh was dealing with the seat issuing the muster rolls.

26. Admittedly, the post of works inspector is class-III (non-gazetted). Recruitment and Promotion Rules relating to the said post were notified by the Public Works Department, Government of Himachal Pradesh on 5th May, 1995. Ex. RW1/P is the copy of the notification. The notification makes it clear that for being appointed as a works inspector, a direct recruit (like the petitioner) should have passed matric examination from a recognized University/Board and must possess ITI Certificate in the trade of building construction from a recognized institution. Of course, work charged mates/beldars could be promoted as works inspectors on their fulfilling the desired qualifications.

27. It is not the case of the petitioner that he possesses ITI Certificate in the trade of building construction from a recognized institution. The respondent in his reply has specifically pleaded that he is only a matriculate. The said fact has not been disputed by the petitioner/workman in the corresponding para of the rejoinder. Since the petitioner did not fulfill the essential qualifications at the time of his initial engagement, I feel that he could not be appointed against the post of works inspector. It seems that the petitioner procured the muster rolls of works inspector in his favour in connivance with his father fraudulently as Shri Bhoop Singh (the father of the petitioner) was working as a Senior Assistant in HPPWD Sub Division, Ghumarwin as well as holding the seat dealing with the issuance of the muster rolls. The muster roll of works inspector was not issued in the name of the petitioner in the month of June, 1998, when the respondent/department came to know regarding the mischief committed by Shri Bhoop Singh. From the

statement made by the petitioner (PW1), it can be gathered that in the month of June, 1998, his father was not posted in HPPWD Sub Division, Ghumarwin. The action of Shri Bhoop Singh in issuing wrong muster roll of works inspector in the name of the petitioner who happens to be his son, cannot be termed as a freudian slip since the record shows that only the services of the petitioner were directly engaged as a works inspector in the office of the respondent. The basis of the claim of the petitioner is itself fallacious.

28. The mandays chart Ex. RW1/B unfolds that the petitioner did not complete 240 days of work in a block of 12 calendar months preceding the date of his termination as envisaged under Section 25-B of the Act. The provisions of Section 25-F of the Act are thus not attracted in this case.

29. The contention of the petitioner is that S/Shri Tilak Raj, Vidya Sagar, Gian Chand, Anil Kumar, Balmukand and Satish Kumar are/were junior to him. They were retained in service by the respondent at the time of the termination of his services. The documents Exs. RW1/E to L make it abundantly clear that Shri Tilak Raj etc. are/were senior to the petitioner as they were employed earlier to 01.1.1998 i.e. the date of the appointment of the petitioner. At the cost of reiteration, I will like to add that the R&P Rules notified by the HPPWD in the year 1995, the copy of which is Ex. RW1/P go to show that the beldars could be promoted as works inspector on their fulfilling certain conditions. There is nothing on the record to show that at the time of the disengagement of the services of the petitioner any person junior to him was retained in service by the respondent. Further, the petitioner has failed to name any person who was directly appointed as a works inspector by the respondent after the termination of his services and that too against the R&P Rules. For these reasons, it cannot be said that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act.

30. To be fair to the ld. counsel for the petitioner/claimant, now I proceed to discuss the rulings cited by him.

- i. Harjinder Singh v. Punjab State Warehousing Corporation, AIR 2010 Supreme Court 1116.

In the said case, work munshi was appointed against the R&P Rules. Such plea was not raised by the Corporation before the Labour Court and was taken for the first time in the writ Court. For the said reason, the contention of the Corporation did not find favour with the Hon'ble Apex Court. The same is not the situation in the present case. Before this Court, the respondent has pleaded that the petitioner managed to get himself engaged as a works inspector fraudulently in connivance with his father Shri Bhoop Singh . The direct appointment of the petitioner as a works inspector was also objected to by the senior beldars whose seniority was ignored as is evident from Ex. PX i.e. the copy of the reply submitted by the respondents in O.A. No.1158/1998.

- ii. Secretary, HPSEB, Kumar House, Shimla-4 and another v/s Shri Piar Chand and another, Latest HLJ 2012 (HP) 591.

In this case, the disengagement of the services of the workman was held to be bad in view of the Certified Standing Orders framed by the Electricity Board.

- iii. Superintending Engineer, H.P.S.E.B. and another versus Bhura Ram and another, 2007 (2) Shim. LC 279.

In this case, new workmen were engaged without offering the job to the senior retrenched workmen. The termination of the services of the employees was held to be bad in view of Section 25-H of the Act.

31. With humility, it is clarified that the trite laid down in the above noted authorities in no way comes to the rescue of the petitioner whose appointment itself is/was in contravention of the R&P Rules.

32. It appears to me that the avarice of the petitioner to grab the Government job and money has forced him to file a totally false and baseless claim. He has no cause of action. The claim petition is not maintainable. The disengagement of the services of the petitioner by the respondent cannot be termed as illegal or unjustified.

33. These issues are decided against the petitioner and in favour of his adversary.

#### ISSUE NO. 4

34. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

35. This issue is decided in favour of the petitioner and against the respondent.

#### RELIEF (ISSUE NO. 5)

36. As a sequel to my findings on the issues No.1 to 3, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed with costs quantified as Rs.10,000/- (ten thousand only).

37. Before parting with the matter, I will like to say that this Court sincerely hopes and trusts that the respondent will initiate appropriate action against the petitioner, his father Shri Bhoop Singh and all concerned so that such murky appointments are curbed in future.

38. The reference is answered in the aforesaid terms.

39. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

40. File after due completion be consigned to the Record Room.

Announced in the open Court today this 16th day of December, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 361/2012  
 Date of Institution : 05.11.2012  
 Date of Decision : 13.12.2013

Shri Inder Singh s/o Shri Narain Singh, Village Bhadarna, P.O. Saklana, Tehsil Sarkaghat,  
 Distt. Mandi, H.P. ....*Petitioner.*

*Versus*

The Executive Engineer, HPPWD Division Dharampur, District Mandi, H.P.  
 ..*Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
 : Sh. Vijay Kaundal, Adv.  
 For the Respondent : Sh. Soham Kaushal, ADA

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Sh. Inder Singh S/O Sh. Narain Singh, Village-Bhadarna, P.O. Saklana, Tehsil Sarkaghat, Distt. Mandi, H.P. by the Executive Engineer, HPPWD Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005, without following the provision of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wager on the muster rolls by the respondent on 01.1.2000. He uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, his services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). He had completed 240 days of work in each and every calendar year of his employment as well as in a block of 12 calendar months preceding the date of his illegal retrenchment i.e. 08.7.2005. Before the termination of his services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to him (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as a daily waged beldar by the respondent in the

month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to him (petitioner) were not retrenched from service alongwith him. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to him (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith him. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her re-engagement, an opportunity of re-employment was not given to him (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their re-engagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of reemployment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. He (petitioner) is unemployed from the date of his disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon’ble Court kindly be set aside the illegal retrenchment order passed by the respondent w.e.f. 08.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
  2. The Hon’ble Court further directed to respondent to regularized the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
  3. The Hon’ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.
3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on the muster roll in the year 2000 and he worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. He was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the non-availability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are

surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been re-engaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Re-engagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been re-engaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by him without any protest. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.
5. Per order dated 02.7.2013, following issues were struck:-
  1. Whether the termination of the services of the petitioner by the respondent w.e.f. 08-07-2005 is illegal and unjustified as alleged? ..OPP.
  2. Whether the petition is not maintainable in the present form? ..OPR.
  3. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? ..OPR.
  4. Whether the claim petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR.
  5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? ..OPR.
6. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 : Not pressed

Issue No.4 : No

Issue No.5 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

## REASONS FOR FINDINGS

### ISSUE NO.1

8. The petitioner Shri Inder Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to him (PW1) and retained in service by the respondent.

In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He

admitted that 1087 other workers were removed from service alongwith him. He denied that no person junior to him has been retained in service by the respondent and his services have been dispensed with in a rightful manner.

9. Conversely, Sh. Anil Sangrai, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of his services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as a daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before reengaging her services as a daily wager, no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 02.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll in the year 2000 and he worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 02.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex.PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent on 06/4/2000. She is/was junior to the petitioner, who was appointed on 01/1/2000. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily

wager in the year 2008. At the time of re-engaging her services, an opportunity of reemployment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

#### ISSUES No. 2, 3 and 5

18. Not pressed.

#### ISSUE NO. 4

19. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my ld. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

20. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

21. This issue is also decided in favour of the petitioner and against the respondent.

#### RELIEF (ISSUE NO. 6)

22. As a sequel to my findings on the issues No.1 and 4, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is

also directed to pay lump sum amount of Rs.50,000/- (Rupees Fifty Thousand only) to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of December, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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**In the Court of Shri Gian Sagar Negi, Sub-Divisional Magistrate, Shimla (R),  
District Shimla, Himachal Pradesh**

Smt. Savitri w/o Shri Kishor Chand, r/o Village and P.O. Chailly *via* Summer Hill, Tehsil and District Shimla, Himachal Pradesh.

*Versus*

General Public

*. . Respondent.*

Whereas Smt. Savitri w/o Shri Kishor Chand, r/o Village and P.O. Chailly *via* Summer Hill, Tehsil and District Shimla, Himachal Pradesh has filed an application alongwith affidavit in the court of undersigned under section 13 of the Birth and Death Registration Act, 1969 to enter the date of birth of Mr. Daksh s/o of Shri Kishor Chand, r/o Village and P.O. Chailly *via* Summer Hill, Tehsil and District Shimla, Himachal Pradesh in the record of Birth and Death in the GP Chailly, Shimla (R) B&D has issued No. Dated 26-2-2014 as following :

Sl. No.	Name of the family member	Relation	Date of Birth
1.	Mr. Daksh	s/o of Shri Kishor Chand	27-11-2009

Hence, this proclamation is issued to the general public if they have any objection/claim regarding entry of date of birth of above in the record of GP Chailly, Shimla, may file their claim/objections on or before one month of publication of this notice in Govt. Gazette in this court, failing which necessary orders will be passed.

Issued today 14-3-2014 under my signature and seal of the court.

Seal.

Sd/-

*Sub-Divisional Magistrate,  
Shimla(R), District Shimla, Himachal Pradesh.*

**In the Court of Shri Gian Sagar Negi, Sub-Divisional Magistrate, Shimla (R),  
District Shimla, Himachal Pradesh**

Shri Sanjay Kumar s/o Late Shri Sudesh Kumar, r/o Satya Niwas near Banga Building New Totu, Shimla-11, P. O. Totu, Tehsil and District Shimla, Himachal Pradesh.

*Versus*

General Public

. . Respondent.

Whereas Shri Sanjay Kumar s/o Late Shri Sudesh Kumar, r/o Satya Niwas near Banga Building New Totu, Shimla-11, P. O. Totu, Tehsil and District Shimla, Himachal Pradesh has filed an application alongwith affidavit in the court of undersigned under section 13 of the Birth and Death Registration Act, 1969 to enter the date of death Late Smt. Satya Devi w/o Late Shri Keshav Ram, r/o Satya Niwas near Banga Building New Totu, Shimla-11, P. O. Totu, Tehsil and District Shimla, Himachal Pradesh in the record of Birth and Death in the office of M.C. Shimla, Shimla (R) B&D has issued No..... Dated..... as following :

Sl. No.	Name of the family member	Relation	Date of Death
1.	Late Smt. Satya Devi	w/o Late Shri Keshav Ram	11-9-2006

Hence, this proclamation is issued to the general public if they have any objection/claim regarding entry of date of death of above in the record of M. C. Shimla, may file their claim/objections on or before one month of publication of this notice in Govt. Gazette in this court, failing which necessary orders will be passed.

Issued today 12-3-2014 under my signature and seal of the court.

Seal.

Sd/-

*Sub-Divisional Magistrate,  
Shimla(R), District Shimla, Himachal Pradesh.*

**CHANGE OF NAME**

I, Hem Raj s/o Shri Gorakh Singh aged 61 years, r/o Village and Post Office Nandher, Tehsil and District Kangra (H. P.) declare that I have changed my name from Hem Raj to Hem Raj Nanda. All concerned note it please.

HEM RAJ NANDA  
s/o Shri Gorakh Singh,  
r/o Village and Post Office Nandher,  
Tehsil and District Kangra (H. P.).